# Legislative Proposals Relating to Tobacco Products

## Notice of Ways and Means Motion and Explanatory Notes

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101-04506/

# Notice of Ways and Means Motion

Notice of Ways and Means Motion to Implement Certain Measures Relating to Tobacco Products

That it is expedient to implement certain measures relating to tobacco products as follows:

SHORT TITLE

**Short title**

**1.** This Act may be cited as the *Tobacco Tax Amendments Act, 2001*.

CUSTOMS ACT

**2. (1) Paragraph 24(1)(*c*) of the *Customs Act* is replaced by the following:**

(*c*) as a duty free shop for the sale of goods free of certain duties or taxes levied on goods under the *Customs Tariff*, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act* or any other law relating to customs, to persons who are about to leave Canada

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

CUSTOMS TARIFF

**3. (1) Subsection 21(2) of the *Customs Tariff* is replaced by the following:**

**Duty on tobacco imported by traveller**

(2) There shall be levied on traveller's tobacco, at the time of its importation, and paid in accordance with the *Customs Act*, a duty of

(*a*) $0.05 per cigarette, in the case of cigarettes;

(*b*) $0.035 per stick, in the case of tobacco sticks; and

(*c*) $0.03 per gram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

**Exception — excise duty-paid manufactured tobacco**

(3) A duty shall not be levied under this section on manufactured tobacco imported by an individual for their personal use if it is stamped in accordance with the *Excise Act* and duty has been imposed on it under section 200 of that Act.

**Definitions**

(4) The definitions in this subsection apply in this section.

**"goods subject to excise"**
**« *marchandises assujetties à l'accise* »**

"goods subject to excise" means

(*a*) beer or malt liquor, within the meaning of the *Excise Act*, of heading No. 22.03 or of tariff item No. 2202.90.10 or 2206.00.80;

(*b*) spirits, within the meaning of the *Excise Act*, of an alcoholic strength by volume exceeding 22.9% volume, of tariff item No. 2204.21.32, 2204.29.32, 2205.10.30, 2205.90.30, 2206.00.22, 2206.00.72 or 2206.00.92;

(*c*) spirits, within the meaning of the *Excise Act*, of heading No. 22.07 or 22.08, other than of tariff item No. 2207.20.11, 2207.20.90, 2208.90.30 or 2208.90.91;

(*d*) cigars or manufactured tobacco of tariff item No. 2402.10.00, 2402.20.00, 2403.10.00, 2403.91.90, 2403.99.10 or 2403.99.90; or

(*e*) goods referred to in any of paragraphs (*a*) to (*d*) that are classified with the container in which they are imported.

**"traveller's tobacco"**
**« *tabac du voyageur* »**

"traveller's tobacco" means manufactured tobacco that is imported by a person at any time and

(*a*) is classified under tariff item No. 9804.10.00, 9804.20.00, 9805.00.00 or 9807.00.00; or

(*b*) would be classified under tariff item No. 9804.10.00 or 9804.20.00 but for the fact that the total value for duty as determined under section 46 of the *Customs Act* of all goods imported by the person at that time exceeds the maximum value specified in that tariff item.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001, except that subsection 21(2) of the Act, as enacted by subsection (1), does not apply to tobacco imported before October 1, 2001.**

**4. (1) Paragraph 83(*a*) of the Act is replaced by the following:**

(*a*) in the case of goods that would have been classified under tariff item No. 9804.10.00 or 9804.20.00, the value for duty of the goods shall be reduced by an amount equal to that maximum specified value and, in the case of alcoholic beverages and tobacco, the quantity of those goods shall, for the purposes of assessing duties other than a duty under subsection 21(2), be reduced by the quantity of alcoholic beverages and tobacco up to the maximum quantities specified in tariff item No. 9804.10.00 or 9804.20.00, as the case may be;

**(2) Subsection (1) comes into force or is deemed to have come into force on October 1, 2001.**

**5. (1) Section 92 of the Act is amended by adding the following after subsection (2):**

**Non-application to Canadian manufactured tobacco**

(3) This section does not apply to any tax imposed under Part III of the *Excise Tax Act*, or any duty imposed under the *Excise Act*, in respect of manufactured tobacco that is manufactured or produced in Canada.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001, except that subsection 92(3) of the Act, as enacted by subsection (1), does not apply to manufactured tobacco entered into a bonding warehouse before that day.**

**6. (1) Note 4 to Chapter 98 of the List of Tariff Provisions set out in the schedule to the Act is replaced by the following:**

4. For the purpose of this Chapter, "duties" means duties or taxes levied or imposed on imported goods under Part 2 of the Act (other than

subsection 21(2)), the *Excise Act*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament relating to customs.

**(2) Subsection (1) comes into force or is deemed to have come into force on October 1, 2001.**

EXCISE ACT

**7. (1) The portion of the definition "cigar stamp" in section 6 of the *Excise Act* before paragraph (*a*) is replaced by the following:**

**"cigar stamp"**
**« *estampille de cigares* »**

"cigar stamp" means any stamp required by this Act and the ministerial regulations to be affixed to a cigar, or a package, carton, box, crate or other container containing cigars, entered for consumption or imported into Canada, to indicate

**(2) The portion of the definition "tobacco stamp" in section 6 of the Act before paragraph (*a*) is replaced by the following:**

**"tobacco stamp"**
**« *estampille de tabac* »**

"tobacco stamp" means any stamp required by this Act and the ministerial regulations to be impressed on, printed on, marked on, indented into or affixed to a cigarette, or a package, carton, box, crate or other container containing manufactured tobacco, entered for consumption or imported into Canada, or to be affixed to Canadian raw leaf tobacco entered for consumption, to indicate

**(3) Section 6 of the Act is amended by adding the following in alphabetical order:**

**"foreign duty free shop"**
**« *boutique hors taxes à l'étranger* »**

"foreign duty free shop" has the meaning assigned by subsection 2(1) of the *Excise Tax Act*;

**"foreign ships' stores"**
***« provisions de bord à l'étranger »***

"foreign ships' stores" has the meaning assigned by subsection 2(1) of the *Excise Tax Act*;

**(4) Subsection (3) is deemed to have come into force on April 6, 2001.**

**8. (1) The Act is amended by adding the following after section 52:**

**Limitation on entry of tobacco into bonding warehouse**

**52.1** Manufactured tobacco shall not be entered into a bonding warehouse if it is intended to be removed for

(*a*) delivery to a duty free shop licensed as such under the *Customs Act*;

(*b*) export for delivery to a foreign duty free shop;

(*c*) export for delivery as foreign ships' stores;

(*d*) entry into a bonded warehouse, licensed as such under the *Customs Tariff*; or

(*e*) delivery as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**9. (1) Section 58 of the Act is replaced by the following:**

**Transfer of goods other than cigars and manufactured tobacco in bond**

**58.** (1) Goods, other than cigars and manufactured tobacco, warehoused under this Act may, without payment of duty, be transferred or removed from one bonding warehouse to another in bond, exported in bond or released from bond to accredited representatives for their

personal or official use, if the transfer, removal, exportation or release is in accordance with the regulations and the ministerial regulations.

**Removal to customs bonded warehouse or duty free shop**

(2) Goods subject to excise, other than cigars and manufactured tobacco, may, without payment of duty, be removed from a bonding warehouse

(*a*) to a bonded warehouse, licensed as such under the *Customs Tariff*, if the goods are

(i) designated for delivery as ships' stores,

(ii) for sale to accredited representatives for their personal or official use, or

(iii) for export; or

(*b*) to a duty free shop, licensed as such under the *Customs Act*, if the goods are for sale to persons who are about to leave Canada.

**Delivery and sale to be in accordance with regulations**

(3) Goods removed under subsection (2) shall be delivered and sold in accordance with any ministerial regulations that apply.

**Definitions**

**58.1** (1) The definitions in this subsection apply in this section.

**"foreign brand tobacco"**
**« *tabac de marque étrangère* »**

"foreign brand tobacco" means tobacco in respect of which the excise tax imposed under section 23.13 of the *Excise Tax Act* is not payable because of section 23.3 of that Act.

**"manufactured tobacco"**
***« tabac fabriqué »***

"manufactured tobacco" does not include partially manufactured tobacco or foreign brand tobacco.

**"partially manufactured tobacco"**
***« tabac partiellement fabriqué »***

"partially manufactured tobacco" means a tobacco product made by a tobacco manufacturer that is cut filler or cut rag or that is manufactured less fully than cut filler or cut rag.

**Categories of manufactured tobacco**

(2) For the purposes of subsection (4), each of the following constitutes a category of manufactured tobacco:

(*a*) cigarettes;

(*b*) tobacco sticks; and

(*c*) manufactured tobacco other than cigarettes and tobacco sticks.

**Removal of manufactured tobacco in bond**

(3) Manufactured tobacco may, without payment of duty, be removed from a bonding warehouse only if

(*a*) it is

(i) removed by its manufacturer and exported in bond in accordance with subsection (4) and not for delivery to a foreign duty free shop or as foreign ships' stores,

(ii) removed by its manufacturer and entered into another bonding warehouse in bond, or

(iii) released to accredited representatives for their personal or official use; and

(*b*) the removal and exportation, entry or release, as the case may be, are in accordance with the regulations and the ministerial regulations.

**Maximum quantity permitted to be exported in bond**

(4) A tobacco manufacturer shall not remove a particular quantity of a category of manufactured tobacco from the manufacturer's bonding warehouse for export in bond at any time in a calendar year if the total quantity of that category of manufactured tobacco exported by the manufacturer in the year up to and including that time, plus the particular quantity, exceeds 1.5% of the total quantity of manufactured tobacco of that category manufactured by the manufacturer in the preceding calendar year.

**Quantities to be excluded for the purpose of subsection (4)**

(5) The total quantities referred to in subsection (4) shall not include any quantity of manufactured tobacco that was exported by the manufacturer for delivery to a foreign duty free shop or as foreign ships' stores.

**Removal of cigars in bond**

(6) Cigars may, without payment of duty, be removed from a bonding warehouse only if

(*a*) they are

(i) removed by their manufacturer and

(A) exported in bond,

(B) entered into another bonding warehouse in bond,

(C) entered into a bonded warehouse, licensed as such under the *Customs Tariff*, if the person entering the cigars into the bonded warehouse certifies to the manufacturer that they are for delivery as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*,

(D) transferred to a duty free shop, licensed as such under the *Customs Act*, if the operator of the duty free shop certifies to

the manufacturer that the cigars are for sale to persons who are about to leave Canada, or

(E) delivered as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*, or

(ii) released to accredited representatives for their personal or official use; and

(*b*) the removal and export, entry, transfer, sale, delivery or release, as the case may be, are in accordance with the regulations and the ministerial regulations.

**Removal of partially manufactured tobacco or foreign brand tobacco in bond**

(7) Partially manufactured tobacco or foreign brand tobacco may, without payment of duty, be removed by its manufacturer from a bonding warehouse only if

(*a*) it is entered into another bonding warehouse in bond or exported in bond and not for delivery to a foreign duty free shop or as foreign ships' stores; and

(*b*) the removal and entry or export, as the case may be, are in accordance with the regulations and the ministerial regulations.

**Diversion**

(8) A person who has acquired goods that are manufactured tobacco, foreign brand tobacco or cigars is liable to pay the duty that would have been payable on the goods at the time the goods were completely manufactured, if the goods

(*a*) have been relieved, under this Act or otherwise, from the duty because of the purpose for which the person acquired them;

(*b*) are removed from a bonded warehouse licensed as such under the *Customs Tariff*, sold or used by the person for another purpose; and

(*c*) would not have been relieved from the duty if the person had acquired them for the other purpose.

**Duty payable at time of acquisition**

(9) The duty a person is liable to pay under subsection (8) on goods is deemed to have become payable by the person at the time the person acquired the goods.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001, except that**

**(*a*) subsections 58(1), (3) and (4) of the Act, as they read immediately before that day, apply to manufactured tobacco (as defined in section 6 of the Act) entered into a bonding warehouse before that day and are subject to subsection 58.1(4) of the Act, as enacted by subsection (1);**

**(*b*) subsections 58.1(3) and (7) of the Act, as enacted by subsection (1), do not apply to tobacco entered into a bonding warehouse before that day; and**

**(*c*) subsections 58.1(4) and (5) of the Act, as enacted by subsection (1), do not apply to tobacco exported for delivery to a foreign duty free shop or as foreign ships' stores if it had been entered into a bonding warehouse before that day.**

**10. (1) The Act is amended by adding the following after section 102:**

**Penalty for removal from bonding warehouse for certain exports**

**102.1** Every person who removes from a bonding warehouse and exports in bond manufactured tobacco (as defined in subsection 58.1(1)) otherwise than in accordance with subparagraph 58.1(3)(*a*)(i) and paragraph 58.1(3)(*b*) is liable to pay, in addition to any duties or taxes that are payable under this or any other Act in respect of the tobacco, a penalty equal to the total of those duties and taxes, and that penalty becomes payable at the time the tobacco is exported.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**11. (1) The portion of subsection 110.1(1) of the Act before paragraph (*a*) is replaced by the following:**

**Penalty and interest**

**110.1** (1) Subject to subsection (2), on default in payment of any duty or penalty payable under this Act within the time prescribed by this Act or the regulations, the person liable to pay that duty or penalty shall pay without delay, in addition to the amount in default,

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**12. Subsections 201(1) and (2) of the Act are replaced by the following:**

**Packaging and stamping of manufactured tobacco and cigars manufactured in Canada**

**201.** (1) Before manufactured tobacco, or cigars, that are manufactured in Canada are entered for consumption under this Act,

(*a*) they shall be put up and prepared by their manufacturer in packages that have printed on them such information as is prescribed by the ministerial regulations; and

(*b*) the manufactured tobacco or cigars and their packages, cartons, boxes, crates and other containers shall be stamped with tobacco stamps or cigar stamps by the manufacturer as required by the ministerial regulations.

**Packaging and stamping of imported manufactured tobacco and cigars**

(2) Subject to subsection (3), before imported manufactured tobacco or imported cigars are released under Part II of the *Customs Act*,

(*a*) they shall be put up and prepared by the importer in packages that have printed on them such information as is prescribed by the ministerial regulations; and

(*b*) the manufactured tobacco or cigars and their packages, cartons, boxes, crates and other containers shall be stamped with tobacco

stamps or cigar stamps by the importer as required by the ministerial regulations.

**13. Section 211 of the Act is replaced by the following:**

**Stamp regulations**

**211.** The Minister may make regulations prescribing the form of stamps to be impressed on, printed on, marked on, indented into or affixed to Canadian raw leaf tobacco, cigarettes, cigars and packages, cartons, boxes, crates and other containers containing manufactured tobacco or cigars, the information to be provided on the stamps and the manner in which the stamps are to be affixed.

**14. (1) The portion of subsection 239.1(1) of the Act before paragraph (*a*) is replaced by the following:**

**Absence of stamps to be notice**

**239.1** (1) The absence of the proper tobacco stamp or cigar stamp required by this Act and the ministerial regulations to be impressed on, printed on, marked on, indented into or affixed to any cigarette or cigar or any package, carton, box, crate or other container of manufactured tobacco or cigars sold, offered for sale, kept for sale or found in the possession of any person is notice to all persons that

**(2) Subparagraph 239.1(2)(*a*)(i) of the Act is replaced by the following:**

(i) in the case of manufactured tobacco, by a licensed tobacco manufacturer for export from Canada in accordance with this Act and the ministerial regulations,

(i.1) in the case of cigars, by a licensed cigar manufacturer

(A) for export from Canada in accordance with this Act and the ministerial regulations, or

(B) as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*,

**(3) Clauses 239.1(2)(*a*)(iii)(A) and (B) of the Act are replaced by the following:**

(A) the cigars were manufactured in Canada and are sold or offered for sale as ships' stores in accordance with the

regulations made under the *Customs Tariff* and the *Excise Tax Act*, or

(B) the manufactured tobacco or cigars were imported and are, in accordance with this Act, the *Customs Tariff* and the *Customs Act*, sold or offered for sale to an accredited representative, to a duty free shop licensed under the *Customs Act*, as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*, to an operator of a bonded warehouse licensed under the *Customs Tariff* or for export, or

**(4) Subparagraph 239.1(2)(*a*)(iv) of the Act is replaced by the following:**

(iv) by a person licensed under the *Customs Act* to operate a duty free shop, if

(A) the manufactured tobacco was imported and is sold or offered for sale in accordance with that Act to a person about to leave Canada, or

(B) the cigars are sold or offered for sale in accordance with that Act to a person about to leave Canada,

**(5) Subparagraph 239.1(2)(*b*)(iv) of the Act is replaced by the following:**

(iv) in the case of cigars or imported manufactured tobacco, in the possession of a person licensed under the *Customs Tariff* to operate a bonded warehouse or under the *Customs Act* to operate a sufferance warehouse or duty free shop in that warehouse or duty free shop,

**(6) Subparagraph 239.1(2)(*b*)(vi) of the Act is replaced by the following:**

(vi) in the case of cigars or imported manufactured tobacco, in the possession of a person as ships' stores, if the acquisition and possession of the cigars or manufactured tobacco by that person are in accordance with the regulations made under the *Customs Act*, the *Customs Tariff* and the *Excise Tax Act*, or

**(7) Subsections (2) to (6) are deemed to have come into force on April 6, 2001, but do not apply to manufactured tobacco entered into a bonding warehouse before that day.**

**15. (1) Paragraph 240(2)(*d*) of the Act is replaced by the following:**

(*d*) in the case of cigars or imported manufactured tobacco, by a person licensed under the *Customs Tariff* to operate a bonded warehouse or under the *Customs Act* to operate a sufferance warehouse or duty free shop, in that warehouse or duty free shop;

**(2) Paragraph 240(2)(*f*) of the Act is replaced by the following:**

(*f*) in the case of cigars or imported manufactured tobacco, as ships' stores by a person if the acquisition and possession of the cigars or manufactured tobacco by that person are in accordance with the regulations made under the *Customs Act*, the *Customs Tariff* and the *Excise Tax Act*; or

**(3) Paragraph 240(3)(*a*) of the Act is replaced by the following:**

(*a*) in the case of manufactured tobacco, by a licensed tobacco manufacturer for export from Canada in accordance with this Act and the ministerial regulations;

(*a*.1) in the case of cigars, by a licensed cigar manufacturer

(i) for export from Canada in accordance with this Act and the ministerial regulations, or

(ii) as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*;

**(4) Subparagraphs 240(3)(*c*)(i) and (ii) of the Act are replaced by the following:**

(i) the cigars were manufactured in Canada and are sold or offered for sale as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*, or

(ii) the manufactured tobacco or cigars were imported and are, in accordance with this Act, the *Customs Act* and the *Customs Tariff*, sold or offered for sale to an accredited representative, to a duty free shop licensed under the *Customs Act*, as ships' stores in accordance with the regulations made under the *Customs Tariff* and the *Excise Tax Act*, to an operator of a bonded warehouse licensed under the *Customs Tariff* or for export; or

**(5) Paragraph 240(3)(*d*) of the Act is replaced by the following:**

(*d*) by a person licensed under the *Customs Act* to operate a duty free shop, if

(i) the manufactured tobacco was imported and is sold or offered for sale in accordance with that Act to a person about to leave Canada, or

(ii) the cigars are sold or offered for sale in accordance with that Act to a person about to leave Canada.

**(6) Subsections (1) to (5) are deemed to have come into force on April 6, 2001, but do not apply to manufactured tobacco entered into a bonding warehouse before that day.**

EXCISE TAX ACT

**16. (1) The definitions "Atlantic manufactured tobacco", "black stock manufactured tobacco" and "licensed tobacco manufacturer" in subsection 2(1) of the *Excise Tax Act* are repealed.**

**(2) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:**

**"foreign duty free shop"**
**« *boutique hors taxes à l'étranger* »**

"foreign duty free shop" means a retail store that is located in a country other than Canada and that is authorized under the laws of that country to sell goods free of certain duties and taxes to individuals who are about to leave that country;

**"foreign ships' stores"**
**« *provisions de bord à l'étranger* »**

"foreign ships' stores" means tobacco products taken on board a vessel or aircraft while the vessel or aircraft is outside Canada and that are intended for consumption by or sale to the passengers or crew while the passengers and crew are on board the vessel or aircraft;

**(3) Subsection 2(7) of the Act is repealed.**

**(4) Subsections (1) to (3) are deemed to have come into force on April 6, 2001.**

**17. (1) Subsection 23(1) of the Act is replaced by the following:**

**Tax on various articles at schedule rates**

**23.** (1) Subject to subsections (6) to (8.3), whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and delivered to a purchaser of those goods, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other Act or law, an excise tax in respect of the goods at the applicable rate set out in the applicable section in whichever of those Schedules is applicable, computed, if that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

**(2) Subsection 23(5) of the Act is replaced by the following:**

**Tax on release by duty free shop of Schedule II tobacco products**

(5) Subject to section 66.1, whenever tobacco products mentioned in Schedule II are sold by the operator of a duty free shop or are retained for the use of the operator, there shall be imposed, levied and collected, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax in respect of those tobacco products at the applicable rate set out in the applicable section in that Schedule, computed, if that rate is specified as a percentage, on the duty paid value or the price at which the tobacco products were purchased by the operator, as the case may be, payable by the operator at the time the tobacco products are delivered to the purchaser or so retained for use.

**(3) Subsection 23(8) of the Act is amended by striking out the word "or" at the end of paragraph (*b*.1) and by adding the following after that paragraph:**

(*b*.2) manufactured tobacco imported into Canada by an individual for their personal use if it is stamped in accordance with the *Excise Act* and duty has been imposed on it under section 200 of that Act; or

**(4) Paragraph 23(8.2)(*a*) of the Act is replaced by the following:**

(*a*) in the case of cigars, products in respect of which section 23.3 applies that are not exported for delivery to a foreign duty free shop or as foreign ships' stores or cut filler or cut rag or products manufactured less fully than cut filler or cut rag, the products have been exported in bond by their manufacturer or producer;

(*a*.1) in the case of products other than those to which paragraph (*a*) applies, the products have been exported by their manufacturer or producer;

**(5) Subsections (1) to (3) are deemed to have come into force on April 6, 2001.**

**(6) Subsection (4) applies to tobacco products exported after April 5, 2001.**

**18. (1) Sections 23.1 and 23.2 of the Act are replaced by the following:**

**Definition of "tobacco product"**

**23.1** In sections 23.11 to 23.3, "tobacco product" means manufactured tobacco other than cut filler, cut rag or products manufactured less fully than cut filler or cut rag.

**Tax on domestic tobacco delivered to a duty free shop or as ships' stores**

**23.11** (1) There shall be imposed, levied and collected, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax, at the applicable rate set out in subsection (2), in respect of tobacco products that are manufactured or produced in Canada and are

(*a*) delivered to a duty free shop;

(*b*) delivered to a bonded warehouse, licensed as such under the *Customs Tariff*;

(*c*) delivered to a person for use as ships' stores in accordance with the regulations made under this Act and the *Customs Tariff*; or

(*d*) exported for delivery to a foreign duty free shop or as foreign ships' stores.

**Rate of tax**

(2) The rate of tax imposed under subsection (1) is

(*a*) $0.0225 per cigarette, in the case of cigarettes;

(*b*) $0.01665 per stick, in the case of tobacco sticks; and

(*c*) $11.65 per kilogram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

**When and by whom tax is payable**

(3) The tax imposed under subsection (1) is payable by the manufacturer or producer of the tobacco products and is payable at the time

(*a*) if paragraph (1)(*d*) applies, they are exported; and

(*b*) in any other case, they are delivered.

**Tax on imported tobacco delivered to a duty free shop**

**23.12** (1) If imported tobacco products are delivered to a duty free shop, there shall be imposed, levied and collected in respect of them, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax at the rate of

(*a*) $0.05 per cigarette, in the case of cigarettes;

(*b*) $0.035 per stick, in the case of tobacco sticks; and

(*c*) $0.03 per gram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

**When and by whom tax payable**

(2) The tax imposed under this section is payable at the time of delivery and is payable by the operator of the duty free shop.

**Tax on exports of tobacco products not exceeding maximum quantity**

**23.13** (1) If tobacco products manufactured or produced in Canada are exported in bond in accordance with subparagraph 58.1(3)(*a*)(i) and paragraph 58.1(3)(*b*) of the *Excise Act* by their manufacturer or producer, there shall be imposed, levied and collected in respect of the tobacco products, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax at the rate of

(*a*) $0.05 per cigarette, in the case of cigarettes;

(*b*) $0.035 per stick, in the case of tobacco sticks; and

(*c*) $30.00 per kilogram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

**Tax on exports of tobacco products exceeding maximum quantity**

(2) If tobacco products manufactured or produced in Canada are exported and subsection (1) does not apply to those products, there shall be imposed, levied and collected in respect of those products, in addition to any other duty or tax payable under this Act or any other Act or law, an excise tax at the rate of

(*a*) $0.0825 per cigarette, in the case of cigarettes;

(*b*) $0.06165 per stick, in the case of tobacco sticks; and

(*c*) $41.65 per kilogram, in the case of manufactured tobacco other than cigarettes and tobacco sticks.

**When and by whom tax is payable**

(3) The tax imposed under this section is payable at the time the tobacco products are exported and is payable by

(*a*) if subsection (1) applies, the manufacturer or producer of the products; and

(*b*) if subsection (2) applies, the exporter of the products.

**Tax not payable on exports to foreign duty free shops or as foreign ships' stores**

(4) The tax imposed under this section is not payable in respect of tobacco products that are exported by their manufacturer or producer for delivery

(*a*) to a foreign duty free shop for sale in the shop; or

(*b*) as foreign ships' stores.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001, except that section 23.11 of the Act, as enacted by subsection (1), does not apply to tobacco products that had been entered into a bonding warehouse before that day.**

**19. (1) Subsection 23.21(2) of the Act is replaced by the following:**

**Exemption for limited exports**

(2) The excise tax imposed under subsection 23.2(1) is not payable by a manufacturer or producer in respect of a particular quantity of a category of tobacco product exported at a time in a calendar year if the total quantity of that category of tobacco product exported by the manufacturer or producer in the calendar year up to and including that time, plus the particular quantity, does not exceed 1 1/2% of the total quantity of that category of tobacco product manufactured or produced by the manufacturer or producer in the preceding calendar year.

**(2) Section 23.21 of the Act, as amended by subsection (1), is repealed.**

**(3) Subsection (1) is deemed to have come into force on April 1, 2000, except that, in applying subsection 23.21(2) of the Act, as enacted by subsection (1), before January 2001, the reference in that subsection to "1 1/2%" shall be read as a reference to "1 3/4%".**

**(4) Subsection (2) is deemed to have come into force on April 6, 2001.**

**20. (1) Section 23.22 of the Act is repealed.**

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**21. (1) The portion of subsection 23.3(1) of the Act before paragraph (*a*) is replaced by the following:**

**Exemption for prescribed tobacco product**

**23.3** (1) The excise tax imposed under section 23.13 is not payable in the case of a tobacco product of a particular brand that is manufactured or produced in Canada and exported from Canada, if

**(2) The portion of subsection 23.3(2) of the Act before paragraph (*a*) is replaced by the following:**

**Exemption for prescribed cigarettes**

(2) The excise tax imposed under section 23.13 is not payable in the case of cigarettes of a particular type or formulation, manufactured or produced in Canada and exported under a brand that is also applied to cigarettes of a different type or formulation that are manufactured or produced in Canada and sold in Canada, if

**(3) Subsections (1) and (2) are deemed to have come into force on April 6, 2001.**

**22. (1) Section 23.31 of the Act is replaced by the following:**

**Tax on cigarettes sold to purchaser not authorized to resell in Ontario**

**23.31** (1) An excise tax shall be imposed, levied and collected on cigarettes that are

(*a*) marked or stamped in accordance with a statute of the Province of Ontario to indicate that they are intended for retail sale in the province; and

(*b*) sold by their manufacturer or producer, or by a person who is authorized under a statute of the province to sell cigarettes in the province, to a purchaser who is not authorized under a statute of the province to sell cigarettes in the province.

**Where tax not imposed**

(2) Tax shall not be imposed under subsection (1) if the purchaser referred to in that subsection is a consumer in the Province of Ontario and the purchase is for consumption by the purchaser or by others at the expense of the purchaser.

**When and by whom tax is payable**

(3) The tax imposed under subsection (1) is payable by the person selling the cigarettes to the purchaser referred to in that subsection and is payable at the time of the sale.

**Amount of tax**

(4) The tax imposed on cigarettes under subsection (1) is equal to the amount by which

(*a*) the excise tax that would have been imposed under section 23 in respect of the cigarettes if the applicable rate of excise tax were the rate set out in paragraph 1(*f*) of Schedule II

exceeds

(*b*) the excise tax that was imposed under section 23 in respect of the cigarettes.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**23. (1) Subsections 23.32(1) and (2) of the Act are replaced by the following:**

**Tax on cigarettes sold to purchaser not authorized to resell in Quebec**

**23.32** (1) An excise tax shall be imposed, levied and collected on cigarettes that are

(*a*) marked or stamped in accordance with a statute of the Province of Quebec to indicate that they are intended for retail sale in that province; and

(*b*) sold by their manufacturer or producer, or by a person who is authorized under a statute of the province to sell manufactured tobacco in the province, to a purchaser who is not authorized under a statute of the province to sell manufactured tobacco in the province.

**Where tax not imposed**

(2) Tax shall not be imposed under subsection (1) if the purchaser referred to in that subsection is a consumer located in the Province of Quebec and the purchase is for consumption by the purchaser or by others at the expense of the purchaser.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**24. (1) Sections 23.33 to 23.341 of the Act are repealed.**

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**25. (1) Subsections 23.35(2) and (3) of the Act are replaced by the following:**

**Tax on excess sale of black stock cigarettes**

(2) If a supplier sells to an on-reserve retailer a quantity of black stock cigarettes in respect of which subparagraph 1(*a*)(ii) of Schedule II applies that exceeds the quantity of black stock cigarettes that the on-reserve retailer is authorized under the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to purchase, an excise tax shall be imposed, levied and collected on those excess cigarettes.

**Tax on illegal sale of black stock cigarettes**

(3) If a supplier sells to a person, other than an Indian consumer in Ontario or an on-reserve retailer, black stock cigarettes in respect of which subparagraph 1(*a*)(ii) of Schedule II applies, an excise tax shall be imposed, levied and collected on those cigarettes.

**(2) Subsection 23.35(5) of the Act is replaced by the following:**

**Amount of tax**

(5) The tax imposed on black stock cigarettes under subsection (2) or (3) is equal to the amount by which

(*a*) the excise tax that would have been imposed under section 23 in respect of those cigarettes if the applicable rate of excise tax were the rate set out in paragraph 1(*f*) of Schedule II

exceeds

(*b*) the excise tax that was imposed under section 23 in respect of those cigarettes.

**(3) Subsections (1) and (2) are deemed to have come into force on April 6, 2001.**

**26. (1) Section 23.36 of the Act is repealed.**

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**27. (1) Sections 68.161 to 68.169 of the Act are repealed.**

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**28. (1) The Act is amended by adding the following after section 68.17:**

**Rebate of tax to importer if foreign taxes paid**

**68.171** (1) The Minister may pay, to a person who has imported into a foreign country tobacco products (as defined in section 23.1) that were manufactured or produced in Canada and exported in bond by their manufacturer or producer to the foreign country in accordance with subparagraph 58.1(3)(*a*)(i) and paragraph 58.1(3)(*b*) of the *Excise Act*, a rebate determined in accordance with subsection (2) in respect of the products if

(*a*) the person provides evidence satisfactory to the Minister that

(i) all taxes and duties imposed on the products under the laws of the foreign country having national application have been paid, and

(ii) the products were marked in accordance with section 202 of the *Excise Act*; and

(*b*) the person applies to the Minister for the rebate within two years after the products were exported to the foreign country.

**Determination of rebate**

(2) The amount of the rebate under subsection (1) is equal to the lesser of

(*a*) the total of the taxes and duties referred to in subparagraph (1)(*a*)(i) that are paid in respect of the tobacco products, and

(*b*) the amount of the tax imposed under subsection 23.13(1) in respect of the tobacco products that is paid by their manufacturer or producer.

**Overpayment of rebate or interest**

(3) If an amount has been paid to a person as a rebate under subsection (1) in respect of tobacco products exported by their manufacturer or producer or as interest in respect of such a rebate and tax under subsection 23.13(2) was imposed in respect of those products, the amount is deemed to be an amount of tax payable under Part III by the manufacturer or producer that became payable on the last day of the first month following that in which the amount was paid to the person.

**Refund of tax to manufacturer if foreign taxes paid**

(4) If a rebate under subsection (1) has been paid in respect of exported tobacco products, the Minister may refund to the manufacturer or producer of the products the amount, if any, by which the tax imposed under subsection 23.13(1) in respect of the products and paid by the manufacturer or producer exceeds the amount of the rebate if the manufacturer or producer applies to the Minister for the refund within two years after the tobacco products were exported.

**Refund of tax to operator of duty free shop**

**68.172** (1) Subject to subsection (2), if the operator of a duty free shop provides evidence satisfactory to the Minister that the operator has

sold imported tobacco products (as defined in section 23.1) in accordance with the regulations made under the *Customs Act* to an individual who is not a resident of Canada and that the products were exported at any time, the Minister may refund to the operator the tax paid under section 23.12 in respect of that portion of the total quantity of the products sold by the operator to the individual and exported at that time that does not exceed

(*a*) in the case of cigarettes, 200 cigarettes;

(*b*) in the case of tobacco sticks, 200 sticks; and

(*c*) in the case of manufactured tobacco other than cigarettes and tobacco sticks, 200 grams.

**Application**

(2) No refund shall be paid under subsection (1) to the operator of a duty free shop in respect of a sale of tobacco unless the operator applies to the Minister for the refund within two years after the sale.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**29. (1) Section 68.18 of the Act is amended by adding the following after subsection (3):**

**Exception for tobacco products**

(3.1) Subsection (2) does not apply in respect of taxes imposed under Part III on tobacco products mentioned in Schedule II.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**30. (1) Subsections 72(2) and (3) of the Act are replaced by the following:**

**Form and contents of application**

(2) An application shall be made in the prescribed form and contain the prescribed information.

**Filing of application**

(3) An application shall be filed with the Minister in any manner that the Governor in Council may, by regulation, prescribe.

**(2) Subsection 72(7) of the Act is replaced by the following:**

**Interest on payment**

(7) If an amount is paid to an applicant under subsection (6), interest at the prescribed rate shall be paid in respect of each day between the day that is sixty days after the day on which the application was received by the Minister and the day on which the payment is sent, and compounded monthly on the total amount of the payment and interest outstanding.

**(3) Subsections (1) and (2) are deemed to have come into force on April 6, 2001.**

**31. (1) Subsection 74(1) of the Act is replaced by the following:**

**Deductions of tax, other than Part I tax, where application**

**74.** (1) In lieu of making a payment, other than a payment in respect of Part I, pursuant to an application under any of sections 68 to 68.11 or 68.17 to 69, the Minister may, on request of the applicant, authorize the applicant to deduct, on such terms and conditions and in such manner as the Minister may specify, the amount that would otherwise be paid to the applicant from the amount of any payment or remittance of tax, penalty, interest or other sum that is reported in a return under section 78 by the applicant.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**32. (1) Subsections 78(1) and (2) of the Act are replaced by the following:**

**Monthly returns**

**78.** (1) Every person who is required to pay tax under Part III or IV shall make each month a return in the prescribed form containing prescribed information of all amounts that became payable by the person on account of that tax in the preceding month.

**Nil returns**

(2) Every person who holds a licence granted under or in respect of Part III or IV and whose tax payable under that Part in the preceding month is nil shall make a return as required by subsection (1) reporting that fact.

**(2) Paragraph 78(3)(*c*) of the Act is replaced by the following:**

(*c*) authorize any person whose activities that give rise to tax payable by the person under Part III or IV are predominantly limited to a seasonal period of operation to make a return in respect of any period longer than one month but not longer than six months, if the tax payable by the person under that Part for the equivalent period in the preceding calendar year did not exceed an average of four hundred dollars per month throughout that equivalent period.

**(3) Paragraph 78(4)(*a*) of the Act is replaced by the following:**

(*a*) in a case where the return is required to be made in a month in accordance with subsection (1) or (2), not later than the last day of that month;

**(4) Subsections (1) to (3) are deemed to have come into force on April 6, 2001.**

**33. (1) Subsections 81.38(8) and (8.1) of the Act are replaced by the following:**

**Interest on refunds**

(8) If a payment is made under subsection (1) or (4) in respect of an application under any of sections 68 to 69, interest at the prescribed rate shall be paid, in respect of each day between the day that is sixty days after the day on which the application was received by the Minister and the day on which the payment was sent, and compounded monthly on the total amount of the payment and interest outstanding.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**34. (1) Section 97.1 of the Act is replaced by the following:**

**Offence of selling in another province cigarettes marked for sale in Ontario**

**97.1** If cigarettes have been marked or stamped in accordance with a statute of the Province of Ontario to indicate that they are intended for sale in that province, every person who sells or offers for sale the cigarettes to a consumer in any other province is guilty of an offence and is liable on summary conviction to a fine of not less than $1,000 and not more than the greater of $1,000 and triple the amount by which

(*a*) the excise tax that would have been imposed under section 23 in respect of the cigarettes if the applicable rate of excise tax had been the rate set out in paragraph 1(*f*) of Schedule II

exceeds

(*b*) the excise tax that was imposed under section 23 in respect of the cigarettes.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**35. (1) The portion of section 97.2 of the Act before paragraph (*b*) is replaced by the following:**

**Offence of selling in another province cigarettes marked for sale in Quebec**

**97.2** If cigarettes have been marked or stamped in accordance with a statute of the Province of Quebec to indicate that they are intended for sale in that province, every person who sells or offers for sale the cigarettes to a consumer in any other province is guilty of an offence and is liable on summary conviction to a fine of not less than $1,000 and not more than the greater of $1,000 and triple the amount by which

(*a*) the excise tax that would have been imposed under section 23 in respect of the cigarettes if the applicable rate of excise tax had been the rate set out in paragraph 1(*f*) of Schedule II

exceeds

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**36. (1) Section 97.3 of the Act is repealed.**

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**37. (1) Sections 97.4 and 97.5 of the Act are replaced by the following:**

**Offence of unauthorized sale of cigarettes intended for Indian reserve**

**97.4** Every person who sells or offers for sale black stock cigarettes described in subparagraph 1(*a*)(ii) of Schedule II in respect of which tax under section 23 was imposed at the rate set out in paragraph 1(*a*) of that Schedule to a person other than a supplier, an on-reserve retailer or an Indian consumer in the Province of Ontario is guilty of an offence and liable on summary conviction to a fine of not less than $1,000 and not more than the greater of $1,000 and triple the amount by which

(*a*) the excise tax that would have been imposed under section 23 in respect of the cigarettes if the applicable rate of excise tax had been the rate set out in paragraph 1(*f*) of Schedule II

exceeds

(*b*) the excise tax that was imposed under section 23 in respect of the cigarettes.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**38. (1) Section 98.2 of the Act is repealed.**

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**39. (1) Subsection 100(5) of the Act is replaced by the following:**

**Failure to make records and books available**

(5) Every person who fails to comply with section 98.1 is guilty of an offence and liable on summary conviction to a fine of not less than $200 and not more than $2,000 or to imprisonment for a term of not more than 6 months or to both the fine and imprisonment.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**40. (1) The portion of paragraph 1(*a*) of Schedule II to the Act before subparagraph (i) is replaced by the following:**

(*a*) $0.13138 for each five cigarettes or fraction of five cigarettes contained in any package, if

**(2) Paragraph 1(*b*) of Schedule II to the Act is replaced by the following:**

(*b*) $0.12138 for each five cigarettes or fraction of five cigarettes contained in any package, if the cigarettes are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.Q. 1977, c. I-2, to indicate that the cigarettes are intended for retail sale in the Province of Quebec; and

**(3) Paragraphs 1(*c*) to (*e*) of Schedule II to the Act are repealed.**

**(4) Subsections (1) to (3) are deemed to have come into force on April 6, 2001.**

**41. (1) Sections 2 and 3 of Schedule II to the Act are replaced by the following:**

2. Tobacco sticks: $0.01965 per stick.

3. Manufactured tobacco other than cigarettes and tobacco sticks: $15.648 per kilogram.

**(2) Subsection (1) is deemed to have come into force on April 6, 2001.**

**42. (1) Schedule VII to the Act is amended by adding the following after section 1:**

1.1 For the purposes of section 1, "duty" does not include a duty levied under subsection 21(2) of the *Customs Tariff*.

**2) Subsection (1) comes into force or is deemed to have come into force on October 1, 2001.**

INCOME TAX ACT

**43. (1) Subsection 182(1) of the *Income Tax Act* is replaced by the following:**

**Surtax**

**182.** (1) Every corporation shall pay a tax under this Part for each taxation year equal to 50% of the corporation's Part I tax on tobacco manufacturing profits for the year.

**(2) Subsection (1) applies to taxation years ending after April 5, 2001, except that, in its application to a corporation's taxation year that includes that day, subsection 182(1) of the Act, as enacted by subsection (1), shall be read as follows:**

**182.** (1) Every corporation shall pay a tax under this Part for the corporation's taxation year that includes April 5, 2001, equal to the total of

(*a*) 40% of that proportion of the corporation's Part I tax on tobacco manufacturing profits for the year that the number of days in the year that are before April 6, 2001, is of the total number of days in the year, and

(*b*) 50% of that proportion of the corporation's Part I tax on tobacco manufacturing profits for the year that the number of days in the year that are after April 5, 2001, is of the total number of days in the year.

APPLICATION

**44. For the purposes of applying the provisions of the *Customs Act*, the *Excise Act* and the *Excise Tax Act* that provide for the payment of, or liability to pay, interest in respect of any amount, the amount shall be determined and interest shall be computed on it as though this Act had been assented to on April 6, 2001.**

# Explanatory Notes

## PREFACE

The legislation to which these explanatory notes relate implements tobacco tax measures announced by the Minister of Finance on April 5, 2001. It also implements a measure proposed in Budget 2000 reducing the exemption threshold under the current tax on exports of tobacco products under Part III of the *Excise Tax Act*.

The amendments to the *Customs Act*, the *Customs Tariff*, the *Excise Act* and the *Excise Tax Act* implement new tax measures with respect to domestic tobacco tax rates, exports of tobacco products, tobacco products sold in duty free shops or as ships' stores, and tobacco products imported by resident travellers. The proposed amendment to the *Income Tax Act* implements an increase in the surtax on a corporation's tax payable under Part I of that Act on profits from tobacco manufacturing.

The legislation also implements a number of related and consequential measures. These include provisions related to the application of interest in respect of taxes or duties newly introduced or increased under this legislation, new restrictions on the entry of tobacco products into bonding warehouses, and their subsequent removal, new stamping requirements and new offence and penalty provisions under the *Excise Act*.

The explanatory notes describe the proposed measures, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

These explanatory notes are provided to assist in the understanding of the proposed measures. They are for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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**Clause 1**

Short Title

Clause 1 provides that the enactment to which these notes relate may be cited as the "Tobacco Tax Amendments Act, 2001".

**Clause 2**

Licences

Customs Act
24(1)(*c*)

Section 24 of the *Customs Act* sets out the conditions under which the Minister of National Revenue may issue a licence for the operation of a sufferance warehouse or a duty free shop. Existing paragraph 24(1)(*c*) refers to a duty free shop as one in which goods are sold "free of duties or taxes". This phrase is amended, as of April 6, 2001, to refer instead to the shop as one in which goods are sold free of "certain" duties or taxes. This change reflects the fact that, as of April 6, 2001, manufactured tobacco sold in duty free shops will bear excise duty and/or excise tax as a result of amendments to the *Excise Act* and the *Excise Tax Act* (see commentary on clauses 8, 9 and 18).

**Clause 3**

Duty on Tobacco Products Imported by a Traveller

Customs Tariff
21(2) to (4)

Existing section 21 of the *Customs Tariff* imposes a duty on imports of goods subject to excise, (i.e., beer, spirits, cigars and manufactured tobacco products) equal to the duty that would have been imposed on the goods under the *Excise Act* had the goods been manufactured in Canada and entered into the domestic market for consumption. This duty ensures that imported goods are subject to the same amount of duty as are like goods produced in Canada. However, relief from this

duty is provided, by virtue of Chapter 98 of the List of Tariff Provisions set out in the schedule to the *Act*, or by virtue of paragraph 83(*a*) of the Act, for goods imported by a returning resident of Canada for the resident's personal use, up to a maximum specified value, and quantity in the case of alcohol and tobacco, referred to as the "traveller's allowance".

Section 21 is amended to impose a new duty on the imported manufactured tobacco, defined under new subsection 21(4) as "traveller's tobacco", that qualifies for relief from existing duties under the traveller's allowance or similar provisions for returning residents. As a result, returning residents will be required to pay duty, either under existing subsection 21(1) or new subsection 21(2), on all manufactured tobacco they import.

The new duty under subsection 21(2) is imposed on quantities of tobacco not exceeding 200 cigarettes (one carton), in the case of cigarettes, 200 sticks, in the case of tobacco sticks, and 200 grams in the case of other manufactured tobacco (e.g., fine-cut tobacco).

The new duty is imposed at the following rates:

- $10.00 per carton of 200 cigarettes,
- $7.00 per 200 tobacco sticks; and
- $6.00 per 200 grams of manufactured tobacco other than cigarettes and tobacco sticks.

The new duty under subsection 21(2) applies to tobacco products imported on or after October 1, 2001.

New subsection 21(3) of the *Customs Tariff* provides relief from the duties imposed under section 21 (including the new duty under subsection 21(2)) on manufactured tobacco imported by an individual for their personal use if the tobacco bears a stamp as required under the *Excise Act* and the duty under that Act has been imposed.

All tobacco products on which duty under the *Excise Act* has been imposed are required to bear a stamp. Therefore, the presence of such a stamp on imported manufactured tobacco will signify that the duty imposed under the *Excise Act* has been applied. New subsection 21(3) thus ensures that Canadian-produced manufactured tobacco on which duty has been imposed prior to its removal from the country is not

subject to duty again on its subsequent importation. New subsection 21(3) comes into force on April 6, 2001.

Existing subsection 21(2) of the *Customs Tariff* is renumbered as subsection 21(4). In addition, the provision is amended to add a definition of "traveller's tobacco" for the purposes of the new duty under subsection 21(2) of the Act. These amendments are also effective April 6, 2001.

**Clause 4**

Reduction in Quantity for Purposes of Calculating Duty

Customs Tariff
83(*a*)

Where duty-relief is available under the *Customs Tariff* for a maximum value or quantity of goods imported by a returning resident (referred to as the "traveller's allowance") and the amount imported by the resident exceeds that specified limit, section 83 of the Act in effect allows the duty relief up to the amount that would otherwise qualify. This applies, among other things, to tobacco products brought into Canada by a returning resident. Under the traveller's allowance, the resident is allowed, under the existing legislation, to import duty-free up to one carton of cigarettes, one carton of 200 tobacco sticks and 200 grams of other manufactured tobacco.

This relief continues to apply to existing customs duties, excise taxes and duties and the goods and services tax or harmonized sales tax. However, as of October 1, 2001, a new duty is imposed under subsection 21(2) of the *Customs Tariff* on imported manufactured tobacco qualifying for the relief from the other duties and taxes on the basis of the traveller's allowance (see commentary on clause 3). Section 83 is therefore amended to clarify that it does not apply for purposes of the new duty. This amendment comes into force on October 1, 2001, which coincides with the effective date of the new duty under subsection 21(2).

**Clause 5**

Relief on Goods Removed from Bonded Warehouse

Customs Tariff
92(3)

Section 92 of the *Customs Tariff* specifies the time of payment of, and provides relief from, duties (including excise taxes and duties imposed under the *Excise Act* and the *Excise Tax Act*) on goods delivered to a bonded warehouse in various circumstances. Amendments to the latter two Acts, effective April 6, 2001, result in the imposition of excise duties and taxes on certain manufactured tobacco that apply despite the fact that the tobacco is entered into a bonded warehouse, and that are payable as and when specified in those Acts. Therefore, new subsection 92(3) of the *Customs Tariff* provides, for greater certainty, that section 92 of that Act does not apply to excise taxes imposed under Part III of the *Excise Tax Act*, or any excise duty imposed under the *Excise Act*, in respect of manufactured tobacco that is manufactured or produced in Canada.

This amendment comes into force on April 6, 2001, but does not apply to manufactured tobacco that was entered into a bonding warehouse before that day.

**Clause 6**

Traveller's Allowance

Customs Tariff
Schedule, Chapter 98, Note 4

Note 4 to Chapter 98 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff* is amended to provide that references in the Chapter to "duties" do not include references to the duty imposed under new subsection 21(2) of the Act (see commentary on clause 3). This is to clarify that tobacco products that are imported by a resident and that qualify for relief under the traveller's allowance are not relieved from the new duty imposed on "traveller's tobacco" (as defined in new subsection 21(4)).

This amendment comes into force on October 1, 2001, which coincides with the effective date of the duty under new subsection 21(2).

**Clause 7**

Definitions

Excise Act
6

Section 6 of the *Excise Act* sets out definitions relating to tobacco products that apply for purposes of the Act.

Section 6 contains definitions of the terms "cigar stamp" and "tobacco stamp". The Act requires these stamps to be affixed to the tobacco product or its packaging. The stamps are used to indicate that either excise duty or the additional duty under section 21 of the *Customs Tariff* has been paid on the stamped product.

These definitions are amended, effective April 6, 2001, to include a reference to stamps that may also be required to be affixed to the carton or other outer container of the product. These amendments come into force on Royal Assent.

Section 6 is further amended by adding the definitions "foreign duty free shop" and "foreign ships' stores", effective April 6, 2001. These terms are relevant to new sections 52.1 and 58.1 of the Act (see commentary on clauses 8 and 9). Both terms take their meaning from amended subsection 2(1) of the *Excise Tax Act* (see commentary on subclause 16(2)).

"Foreign duty free shop" refers to a retail store that is located in a foreign country and that is authorized under the laws of that country to sell goods free of certain duties and taxes to individuals who are about to leave the country. "Foreign ships' stores" refers to tobacco products that are taken on board a vessel or aircraft while it is outside Canada and that are intended for consumption by, or sale to, the passengers or crew while on board the vessel or aircraft.

**Clause 8**

Limitation on Entry of Tobacco Into Bonding Warehouse

Excise Act
52.1

New section 52.1 of the *Excise Act* sets out new limitations on when Canadian-produced manufactured tobacco (i.e., all tobacco products other than cigars) can be entered into a bonding warehouse in order to defer or avoid payment of excise duties. The section prohibits the entry into a bonding warehouse of manufactured tobacco that is intended to be removed for delivery to a licensed Canadian duty free shop, export and delivery to a foreign duty free shop, delivery in Canada as ships' stores, export and delivery as foreign ships' stores, or entry into a customs bonded warehouse.

The effect of this provision is to ensure that, in the circumstances it describes, the excise duty under section 200 of the Act is imposed on the manufactured tobacco. Under section 47 of the Act, all tobacco products manufactured in Canada that are not entered into a bonding warehouse must be entered for consumption. They are charged with the applicable duty at the time they are completely manufactured, and must be stamped in accordance with the Act.

New section 52.1 comes into force on April 6, 2001.

**Clause 9**

Removal of Goods from Bonding Warehouse

Excise Act
58 and 58.1

Section 58 Removal of Goods Other Than Tobacco Products

Section 58 of the *Excise Act* sets out the circumstances under which goods can be removed from a bonding warehouse without payment of excise duties. Subsection 58(1) is amended so that it no longer applies to cigars and manufactured tobacco. Instead, the rules contained in new section 58.1 apply to those products.

This change comes into force on April 6, 2001, except that existing subsection 58(1) continues to apply to manufactured tobacco entered into a bonding warehouse before that day. In that case, however, existing subsection 58(1) is subject to the new restriction (under subsection 58.1(4)) on the quantity of manufactured tobacco that a manufacturer can remove from a bonding warehouse for export in bond in any given year. It should be noted that no such quantity restriction applies to partially manufactured tobacco or foreign brand tobacco (both as defined in new subsection 58.1(1)) as those products are excluded from the definition "manufactured tobacco" for purposes of applying new subsection 58.1(4).

Existing subsection 58(2) also provides for the removal of goods from a bonding warehouse without the payment of duty in certain cases. It does not apply to manufactured tobacco or cigars. It is amended, and subsection 58(3) is added, to reflect minor wording changes that are made for consistency with other provisions of the Act.

Section 58.1 Removal of Tobacco Products from Bonding Warehouse

New section 58.1 sets out the rules governing the removal of tobacco products from a bonding warehouse.

Subsection 58.1(1) Definitions

For purposes of section 58.1, "manufactured tobacco" does not include partly manufactured tobacco, being cut filler, cut rag or tobacco products manufactured less fully than cut filler or cut rag. References in the section to "manufactured tobacco" also exclude references to "foreign brand tobacco". "Foreign brand tobacco" refers to tobacco products that are prescribed under section 23.3 of the *Excise Tax Act*, which are produced in Canada exclusively for export. Partially manufactured tobacco and foreign brand tobacco are both dealt with under new subsection 58.1(7).

Subsection 58.1(1) comes into force on April 6, 2001.

Subsection 58.1(2) Categories of Manufactured Tobacco

Subsection 58.1(2) provides that, for purposes of subsection 58.1(4), cigarettes, tobacco sticks and manufactured tobacco other than cigarettes and tobacco sticks each constitute a separate category of manufactured tobacco. Subsection 58.1(4) sets out a limit on the quantity of each category of manufactured tobacco that can be exported in bond by the manufacturer each year.

Subsection 58.1(2) comes into force on April 6, 2001.

Subsection 58.1(3) Removal of Manufactured Tobacco in Bond

Subsection 58.1(3) provides that manufactured tobacco (as defined in subsection 58.1(1)) may be removed from a bonding warehouse without payment of duty only if it is:

- removed by its manufacturer and exported in bond in accordance with subsection 58.1(4) and not to a foreign duty free shop or as foreign ships' stores (as defined in amended section 6);

- removed by its manufacturer and entered into another bonding warehouse in bond; or

- released to accredited representatives (i.e., foreign diplomats) for their personal or official use.

The removal and exportation, entry or release, as the case may be, must be in accordance with the applicable regulations made under the Act.

The effect of this new provision is to no longer permit manufactured tobacco to be delivered duty-free to a duty free shop or as ships' stores, as is allowed under the existing legislation. This rule coincides with new section 52.1, which prohibits manufactured tobacco from being entered into a bonding warehouse if it is intended to be delivered for such purposes. Together, these provisions ensure that all Canadian-produced manufactured tobacco to be exported for delivery to a foreign duty free shop or for use as foreign ships' stores, or delivered in Canada to a duty free shop or for use as ships' stores, is entered for consumption and thus bears duty under the *Excise Act* at the time it is fully manufactured. The tobacco is also subject to excise

tax under new section 23.11 of the *Excise Tax Act* (see commentary on clause 18).

New subsection 58.1(3) comes into force on April 6, 2001, but does not apply to manufactured tobacco entered into a bonding warehouse before that day.

Subsections 58.1(4) and (5) Maximum Quantity Permitted to be Exported In Bond

While subsection 58.1(3) continues to permit manufactured tobacco to be exported in bond otherwise than to a foreign duty free shop or as foreign ships' stores, subsection 58.1(4) limits the quantities that can be so exported each year by a manufacturer without the payment of duty. The maximum quantities are established for each category of manufactured tobacco (as defined in subsection 58.1(2)).

The exemption threshold is equal to 1.5% of the manufacturer's preceding year's production of the particular category of manufactured tobacco, not including, pursuant to subsection 58.1(5), tobacco that the manufacturer exported for delivery to a foreign duty free shop or as foreign ships' stores. Also excluded from this calculation is all "foreign brand tobacco" (as defined in subsection 58.1(1)), given its exclusion from the definition of "manufactured tobacco" in that subsection.

Exports of manufactured tobacco in excess of the maximum quantities provided for under subsection 58.1(4) are charged with the excise duty under the *Excise Act*. In addition, such exports are subject to the new excise tax imposed under subsection 23.13(2) of the *Excise Tax Act* (see commentary on Clause 18).

New subsections 58.1(4) and (5) generally apply to manufactured tobacco removed from a bonding warehouse after April 5, 2001, but do not restrict the removal of tobacco to be exported for delivery to a foreign duty free shop or as foreign ships' stores if the tobacco was entered into the warehouse before April 6, 2001.

Subsection 58.1(6) Removal of Cigars in Bond

Subsection 58.1(6) incorporates the rules governing the removal of cigars from a bonding warehouse, which, under the existing

legislation, are found in subsections 58(1), (3) and (4). All the rules relating to tobacco products are now contained in new section 58.1. There are no substantive changes to these rules relating to cigars.

Subsection 58.1(6) comes into force on April 6, 2001.

Subsection 58.1(7) Removal of Partially Manufactured Tobacco or Foreign Brand Tobacco in Bond

Subsection 58.1(7) incorporates the rules governing the removal from a bonding warehouse of partially manufactured tobacco or foreign brand tobacco (both as defined in subsection 58.1(1)). Subsection 58.1(7) provides that partially manufactured tobacco or foreign brand tobacco may be removed from a bonding warehouse only of it is entered into another bonding warehouse in bond or is exported in bond and not for delivery to a foreign duty free shop or as foreign ships' stores. Therefore, for example, under new subsection 58.1(7), foreign brand tobacco cannot be delivered by its manufacturer to a duty free shop, domestic or foreign, without the payment of duty.

Subsection 58.1(7) comes into force on April 6, 2001, except that existing subsections 58(1), (3) and (4) continue to apply to tobacco entered into a bonding warehouse before that day.

Subsections 58.1(8) and (9) Diversion

New subsections 58.1(8) and (9) incorporate the rules applicable when foreign brand tobacco (as defined in subsection 58.1(1)) or cigars are sold, used or removed from a bonding warehouse for a different purpose than that for which they were acquired and for which they qualified for duty relief. Under the existing legislation, these rules are contained in subsection 58(6). They are moved to new section 58.1 so that all the rules relating to the removal of tobacco products from a bonding warehouse are contained in the same section. It should be noted that new subsection 58.1(8) is also intended to cover the circumstances set out in existing subsection 58(5), which is repealed.

Subsections 58.1(8) and (9) come into force on April 6, 2001.

**Clause 10**

**Penalty for Removal from Bonding Warehouse for Certain Exports**

Excise Act
102.1

New section 102.1 of the *Excise Act* imposes a penalty on a person who removes manufactured tobacco (as defined in subsection 58.1(1)) from a bonding warehouse for export in bond otherwise than in accordance with new subparagraph 58.1(3)(*a*)(i) and paragraph 58.1(3)(*b*). Subparagraph 58.1(3)(*a*)(i) prohibits certain exports in bond and requires adherence to new subsection 58.1(4), which imposes a quantity restriction on exports in bond (see commentary on clause 9). Paragraph 58.1(3)(*b*) requires that the removal and exportation of the tobacco be in accordance with the applicable regulations made under the Act.

The penalty is in addition to all duties and taxes payable in respect of the manufactured tobacco, and is equal to the total of those duties and taxes. The penalty becomes payable at the time the tobacco is exported.

New section 102.1 comes into force on April 6, 2001.

**Clause 11**

**Penalty and Interest**

Excise Act
110.1(1)

Section 110.1 of the *Excise Act* imposes a liability to pay interest and penalty where there is a default in the payment of a duty payable under the Act. The subsection is amended, effective April 6, 2001, to also apply in the case of a default in the payment of a penalty payable under the Act, such as the new penalty under section 102.1 of the Act (see commentary on clause 10).

**Clause 12**

**Packaging and Stamping of Manufactured Tobacco and Cigars**

Excise Act
201(1) and (2)

Section 201 of the *Excise Act* provides that a manufacturer of cigars or manufactured tobacco must satisfy packaging and stamping requirements for the products, as set out in the ministerial regulations under the Act, before the products are entered for consumption in Canada. Subsections 201(1) and (2) are amended to refer also to the stamping of cartons, boxes, crates or other outer containers of tobacco products. Amendments to section 211 of the Act extend the authority to make regulations in respect of stamps on those containers. These amendments come into force on Royal Assent.

**Clause 13**

**Stamp Regulations**

Excise Act
211

Section 211 of the *Excise Act* provides authority for the Minister of National Revenue to prescribe by regulation the form of stamps, the information to be provided on stamps, and the manner of affixing stamps, to tobacco products or to certain packages of tobacco products. This section is amended to extend the authority of the Minister to make similar regulations with respect to stamps to be affixed to cartons, boxes, crates or other outer containers of tobacco products. This amendment comes into force on Royal Assent.

**Clause 14**

**Absence of Stamps**

**Excise Act**
**239.1(1) and (2)**

Subsection 239.1(1) of the *Excise Act* provides that the absence of a proper stamp on tobacco products or packages of tobacco products sold, offered or kept for sale, or in a person's possession, constitutes notice for the purposes of the Act that excise tax and either the excise duty or the additional duty under the *Customs Tariff* have not been paid. The subsection is amended to refer also to the absence of any required stamps on cartons, boxes, crates or other containers of tobacco products, given that amendments to section 211 of the Act permit ministerial regulations to be made in respect of stamping requirements on such outer containers as well. This amendment to subsection 239.1(1) comes into force on Royal Assent.

Subsection 239.1(2) provides that tobacco products that do not meet the prescribed stamping requirements shall be forfeited to the Crown and seized in various circumstances described in the subsection. Under the existing subsection, those circumstances do not include when manufactured tobacco or cigars are sold or offered for sale as ships' stores or to a duty free shop. Under the existing law, excise duty is not imposed on tobacco products delivered for such purposes and, therefore, they are not required to be stamped.

Changes to the treatment of Canadian-produced manufactured tobacco delivered as ships' stores or to a duty free shop, generally applicable after April 5, 2001, now require duty to be paid on it and, therefore, it must be appropriately stamped (see commentary on clause 8). Subparagraphs 239(2)(*a*)(i), (iii) and (iv) and (2)(*b*)(iv) and (vi) are therefore amended to reflect that change.

Amended subparagraphs 239(2)(*a*)(iii) and (2)(*b*)(vi) reflect the fact that manufactured tobacco continues to be duty-free, and therefore is not required to be stamped, when it is imported and delivered for use as ships' stores. Similarly, amended subparagraphs (2)(*a*)(iii) and (iv) and (2)(*b*)(iv) reflect the fact that there continues to be no stamping requirement for imported manufactured tobacco that is sold in a duty free shop. However, while the absence of a stamping requirement

indicates that such imported tobacco is not subject to duty under the *Excise Act*, reference should be made to new section 23.12 of the *Excise Tax Act*, which imposes a new excise tax on imported manufactured tobacco that is for sale in Canada in duty free shops. That new excise tax is payable by the operator of the duty free shop at the time the imported tobacco products are delivered to the shop (see commentary on clause 18).

The amendments to subsection 239.1(2) generally come into force on April 6, 2001 but the rules under existing section 239.1 continue to apply to manufactured tobacco entered into a bonding warehouse before that day.

**Clause 15**

Where Possession or Sale of Unstamped Manufactured Tobacco or Cigars Not an Offence

Excise Act
240(2) and (3)

Subsection 240(1) of the *Excise Act* makes it an offence, in certain instances, to sell, offer for sale, or have in one's possession, tobacco products that are not properly put up in packages and stamped as required under the Act. Subsections 240(2) and (3) then set out the exceptions to that rule.

Changes to the treatment of Canadian-produced manufactured tobacco delivered as ships' stores or to a duty free shop, generally applicable as of April 6, 2001, now require duty to be paid on the tobacco and, therefore, it must be appropriately stamped (see commentary on clause 8). The amendments to section 240 are consequential on those changes.

Paragraph 240(2)(*d*) is amended to remove the existing exception with respect to Canadian-produced manufactured tobacco in the possession of a licensed operator of a bonded warehouse, sufferance warehouse or duty free shop. Paragraph 240(2)(*f*) is amended to remove the existing exception with respect to the possession of Canadian-produced manufactured tobacco as ships' stores.

Paragraph 240(3)(*a*) is amended to remove the existing exception for manufacturers with respect to Canadian-produced manufactured tobacco sold or offered for sale as ships' stores.

Subparagraphs 240(3)(*c*)(i) and (ii) are amended to remove the existing exception available to operators of bonded warehouses in relation to Canadian-produced manufactured tobacco sold or offered for sale as ships' stores.

Finally, paragraph 240(3)(*d*) is amended to remove the existing exception available to an operator of a duty free shop in relation to Canadian-produced manufactured tobacco sold or offered for sale in a duty free shop.

In all of the instances where the exception is removed, the tobacco in question is subject to duty and, therefore, is also subject to the applicable stamping requirements, generally as of April 6, 2001. The changes to section 240 likewise apply as of April 6, 2001 except that the existing rules under section 240 continue to apply to any manufactured tobacco that had been entered into a bonding warehouse before that day.

**Clause 16**

Interpretation

Excise Tax Act
2

Section 2 of the *Excise Tax Act* defines terms used in Parts I to VIII of the Act (other than section 121) and contains certain application and interpretation rules relevant to the application of those Parts.

**Subclauses 16(1) and (2)**

Definitions

Excise Tax Act
2(1)

Subsection 2(1) of the *Excise Tax Act* contains, among other things, definitions relevant to the excise tax imposed under Part III of the Act on tobacco products. The subsection is amended to delete the definitions of "Atlantic manufactured tobacco", "black stock manufactured tobacco" and "licensed tobacco manufacturer". The subsection is also amended to add the definitions of "foreign duty free shop" and "foreign ships' stores". These amendments come into force on April 6, 2001.

"Atlantic manufactured tobacco" refers to manufactured tobacco that is marked or stamped to indicate that it is intended for retail sale in the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland (but not marked or stamped to indicate that it is intended for retail sale specifically in Nova Scotia or New Brunswick). The term "Atlantic manufactured tobacco" is no longer used in the *Excise Tax Act*. Therefore, the definition is repealed, effective April 6, 2001.

"Black stock manufactured tobacco" refers to manufactured tobacco, other than cigarettes and tobacco sticks, that is stamped to indicate that it has borne federal excise duty and tax, but not stamped or marked so as to indicate that it is intended for retail sale in a particular province or provinces. This stamp was necessary to distinguish that tobacco when it attracted a reduced rate of federal excise tax. Given that, as of April 6, 2001, such tobacco no longer attracts a reduced rate of federal excise tax, there is no need to continue to refer to it separately. Therefore, the definition is repealed, effective on that day (see commentary on amendments to Schedule II to the Act under clause 41).

"licensed tobacco manufacturer" refers to a tobacco manufacturer, within the meaning of section 6 of the *Excise Act,* who is licensed under that Act. The definition is repealed since it is no longer used in the *Excise Tax Act*. The term had been relevant to sections 68.165 to 68.168 of the *Excise Tax Act*, which provided for deductions in

computing excise taxes payable under section 23 in respect of certain tobacco products that were held in inventory when excise tax rate changes came into effect in 1994. Those provisions have since lapsed and are therefore repealed (see commentary on clause 27).

"Foreign duty free shop" is defined as a retail store that is located in a foreign country and is authorised by that country to sell goods free of certain duties and taxes to departing travellers. The term "foreign duty free shop" is defined in existing section 23.22 for specific purposes. Since, as of April 6, 2001, that section is repealed and the term continues to be used in several provisions of the *Excise Tax Act*, the definition is added to subsection 2(1) so that it applies, as of that day, to Parts I to VIII of the Act (see commentary on clause 18).

"Foreign ships' stores" are defined as tobacco products taken on board a vessel or aircraft while it is outside Canada and that are intended for consumption by, or sale to, the passengers and crew while they are on board the vessel or aircraft. The term "foreign ships' stores" is used in new sections 23.11 and 23.13 of the *Excise Tax Act* (see commentary on clause 18).

**Subclause 16(3)**

Atlantic Provinces Markings

Excise Tax Act
2(7)

Existing subsection 2(7) of the *Excise Tax Act* provides that, for certain purposes, manufactured tobacco with Atlantic Provinces markings is deemed not to be marked to indicate that it is intended for retail sale in Nova Scotia or New Brunswick. The special markings were once used to distinguish this tobacco, which then attracted a reduced federal excise tax rate. The Atlantic Provinces markings are no longer used. Therefore this subsection is repealed, effective April 6, 2001.

**Clause 17**

Excise Tax on Tobacco Products

Excise Tax Act
23

Section 23 of the *Excise Tax Act* imposes an excise tax on various goods imported into Canada or manufactured or produced in Canada, among which are tobacco products mentioned in Schedule II to the Act. The tax is imposed under subsection 23(1). Subsections 23(8) and (8.2), among others, set out various circumstances in which the tax does not apply.

**Subclauses 17(1) and (2)**

Tax on Tobacco Products at Schedule II Rates

Excise Tax Act
23(1) and (5)

Existing subsection 23(1) makes reference to subsection 23.2(6), which has been repealed. The reference to the repealed provision is therefore removed from subsection 23(1).

Similarly, existing subsection 23(5) makes reference to subsection 23.2(5), which has been repealed. The reference to the repealed provision is therefore removed from subsection 23(5).

These amendments come into force on April 6, 2001.

**Subclause 17(3)**

Exception for Duty-paid Manufactured Tobacco Imported by Traveller

Excise Tax Act
23(8)(*b*.2)

New paragraph 23(8)(*b*.2) provides relief from the excise tax under subsection 23(1) on manufactured tobacco imported by an individual for their own use if the tobacco bears a stamp as required under the *Excise Act* and the product has borne duty under that Act. All Canadian-produced tobacco products on which duty under the *Excise Act* is imposed are required to bear a stamp. The presence of the stamp on tobacco products brought back into Canada therefore indicates that duty was paid on the product prior to its export.

New sections 52.1 and 58.1 of the *Excise Act* prohibit Canadian-produced manufactured tobacco from being exported in bond for delivery to a foreign duty free shop or as foreign ships' stores. These provisions therefore trigger the imposition of the duty under section 200 of that Act on the tobacco products at the time they are fully manufactured. In addition, new section 23.11 of the *Excise Tax Act* imposes an excise tax on such tobacco products at the time they are exported from Canada by their manufacturer. New paragraph 23(8)(*b*.2) therefore ensures that the tobacco does not also bear the excise tax under subsection 23(1) when it is brought back to Canada by a returning resident (see also the commentary on clauses 8, 9 and 18).

New paragraph 23(8)(*b*.2) comes into force on April 6, 2001, which coincides with the effective date of new sections 52.1 and 58.1 of the *Excise Act* and new section 23.11 of the *Excise Tax Act*.

**Subclause 17(4)**

Exception in the Case of Certain Exported Tobacco

Excise Tax Act
23(8.2)

Subsection 23(8.2) of the *Excise Tax Act* provides for exemptions from the excise tax under subsection 23(1) of the Act. Existing paragraph 23(8.2)(*a*) exempts tobacco products when they are exported in bond by their manufacturer. The subsection is amended so that the condition that the export be "in bond" no longer applies in the case of all tobacco products.

The condition that the export must be in bond continues to apply to cigars, to partially manufactured tobacco, being cut rag, cut filler or tobacco manufactured less fully than cut rag or cut filler, and to tobacco that is prescribed under section 23.3, which is produced exclusively for export, and that is not for delivery to a foreign duty free shop or as foreign ships' stores. Other tobacco products are not permitted to be exported in bond in certain circumstances. Nevertheless, they continue to be relieved of the tax under subsection 23(1) when they are exported by their manufacturer since they are instead subject to the new excise taxes under sections 23.11 and 23.13 of the Act (see commentary on clause 18).

The amendment to subsection 23(8.2) applies to tobacco products exported after April 5, 2001.

**Clause 18**

Excise Taxes on Tobacco Products Sold in Duty-free or Export Markets

Excise Tax Act
23.1; 23.11; 23.12; 23.13 and 23.2

Section 23.1 Definition of "Tobacco Product"

Existing section 23.1 of the *Excise Tax Act* defines the term "tobacco product" for purposes of the existing export tax on tobacco products

under section 23.2, and for purposes of other provisions related to that tax. Section 23.1 is amended to remove the reference to section 23.2 since the export tax under that section is repealed for exports after April 5, 2001. The definition "tobacco product" in section 23.1 applies instead for purposes of new sections 23.11, 23.12 and 23.13. It also continues to apply for purposes of section 23.3.

The amendment to section 23.1 comes into force on April 6, 2001.

Section 23.11 Tax on Domestic Tobacco Delivered to a Duty Free Shop, Bonded Warehouse or as Ships' Stores

New section 23.11 of the *Excise Tax Act* imposes an excise tax on Canadian-produced tobacco products (as defined in amended section 23.1 of the Act) that are delivered in Canada to a duty free shop, a bonded warehouse, or for use as ships' stores. It also applies to Canadian-produced tobacco products that are exported for delivery to a foreign duty free shop or as foreign ships' stores (as newly defined in subsection 2(1)).

The tax is payable by the manufacturer of the tobacco products at the time of delivery in the case of deliveries in Canada, and at the time of export, in the case of deliveries to a foreign duty free shop or as foreign ships' stores. The tax is imposed at the rate of $4.50 per carton of 200 cigarettes, $3.33 per carton of 200 tobacco sticks and $2.33 per 200 grams of manufactured tobacco other than cigarettes and tobacco sticks (e.g., fine-cut tobacco).

It should be noted that new sections 52.1 and 58.1 of the *Excise Act* (see clauses 8 and 9) ensure that these products are also subject to excise duty under that Act since they are no longer permitted to be entered into a bonding warehouse after their manufacture. They are, therefore, charged with the duty at the time they are completely manufactured. Therefore, the total of the excise tax and excise duty amounts to $10 per carton for cigarettes, $7 per carton for tobacco sticks and $6 per 200 grams for fine-cut tobacco.

The excise tax under new section 23.11 generally comes into force on April 6, 2001, but does not apply to tobacco products that had been entered into a bonding warehouse before that day.

It should also be noted that imported tobacco products sold in Canada in duty free shops are charged with an excise tax under new section 23.12 of the *Excise Tax Act*, at a rate equivalent to the combined excise tax and duty rate applicable to domestic tobacco products sold in the shop. The tax under new section 23.12 is payable by the shop operator at the time the imported tobacco products are delivered to the shop.

Section 23.12 Tax on Imported Tobacco Products Delivered to a Duty Free Shop

New section 23.12 of the *Excise Tax Act* imposes an excise tax on tobacco products (as defined in amended section 23.1 of the Act) that are imported and delivered to a duty free shop in Canada. The tax is imposed at the rate of $10 per carton of 200 cigarettes, $7 per carton of 200 tobacco sticks and $6 per 200 grams of manufactured tobacco other than cigarettes and tobacco sticks (e.g., fine-cut tobacco). Under subsection 23.12(2), the duty free shop operator is liable to pay the tax at the time the tobacco is delivered to the duty free shop.

Reference should also be made to new section 68.172 of the *Excise Tax Act* (see commentary on clause 28). That section permits the operator of the duty free shop to obtain a refund of the tax under section 23.12 in respect of a specified quantity of imported tobacco products that are sold to a non-resident individual who takes the products back out of the country.

Section 23.12 applies to imported tobacco products delivered to a duty free shop after April 5, 2001.

Section 23.13 Tax on Exports of Tobacco Products

New section 23.13 of the *Excise Tax Act* imposes new export taxes on Canadian-produced tobacco products at the time they are exported. These taxes replace the existing export tax on tobacco products (under repealed section 23.2) for exports after April 5, 2001.

Pursuant to the definition of "tobacco product" in section 23.1, the new taxes do not apply to partially manufactured tobacco (i.e., cut rag, cut filler or tobacco products manufactured less fully than cut rag or cut filler). Further, the new taxes do not apply to products

prescribed under section 23.3 of the Act, which are produced exclusively for export.

Also excluded from the scope of the excise taxes under new section 23.13 are exports for delivery to foreign duty free shops or as foreign ships' stores. Such exports are, instead, subject to tax and duty under separate provisions, being new subsection 23.11(1) of the *Excise Tax Act* and section 200 of the *Excise Act* (by virtue of new sections 52.1 and 58.1 of the *Excise Act*).

Subsection 23.13(1) imposes tax on tobacco products exported by their manufacturer in bond in accordance with new subparagraph 58.1(3)(*a*)(i) and paragraph 58.1(3)(*b*) of the *Excise Act*. Subparagraph 58.1(3)(*a*)(i) requires adherence to subsection 58.1(4) of that Act, which imposes a limit on the quantity of tobacco products that can be removed from a bonding warehouse for export in bond (i.e., duty-free) by a manufacturer in any given year (not counting partially manufactured tobacco and prescribed tobacco products under section 23.3 that are produced exclusively for export). Further, pursuant to paragraph 58.1(3)(*b*) of that Act, the removal of the tobacco from a bonding warehouse and the exportation referred to in subparagraph (3)(*a*)(i) must be in accordance with the applicable regulations made under the *Excise Act*.

Where a manufacturer's annual quantity limit on in-bond exports has not been exceeded, the tax under new section 23.13 of the *Excise Tax Act* is imposed under subsection 23.13(1) at the rate of $10 per carton of 200 cigarettes, $7.00 per carton of 200 tobacco sticks and $30.00 per kilogram of manufactured tobacco other than cigarettes and tobacco sticks (e.g., fine-cut tobacco). This tax is refundable under new section 68.171 of the Act if all taxes and duties imposed, at the national level, by the foreign jurisdiction to which the products are exported are paid (see commentary on clause 28).

Where tobacco products are exported otherwise than in accordance with subparagraph 58.1(3)(*a*)(i) and paragraph 58.1(3)*b*) of the *Excise Act* (e.g., where they are in excess of the manufacturer's annual limit determined under subsection 58.1(4) of that Act), they are subject to the non-refundable higher excise tax imposed under subsection 23.13(2) of the *Excise Tax Act*.

The tax rates under subsection 23.13(2) are set higher than those under subsection 23.13(1) to reflect the total of the federal excise tax and the approximate provincial product and sales taxes imposed on tobacco products in the lowest-rate province. The excise tax under subsection 23.13(2) is imposed at the rate of $16.50 per carton of 200 cigarettes, $12.33 per carton of 200 tobacco sticks and $41.65 per kilogram of manufactured tobacco other than cigarettes and tobacco sticks. It should be noted that, in these circumstances, the exported tobacco products are not permitted to be exported in bond and are therefore also subject to the excise duty under the *Excise Act*. The combined excise tax and duty on these exports is, therefore, $22 per carton of cigarettes, $16 per carton of tobacco sticks and $60 per kilogram of fine-cut tobacco.

Section 23.13 applies to tobacco products exported after April 5, 2001.

Section 23.2 Tax on Exports of Tobacco Products Before April 6, 2001

Existing section 23.2 of the *Excise Tax Act* imposes an excise tax on tobacco products (as defined in section 23.1 of the Act) that are manufactured in Canada and exported, subject to the exemptions set out in existing sections 23.21 to 23.3 of the Act. Section 23.2 is repealed with respect to tobacco products exported on or after April 6, 2001, which is the date on which the new export taxes imposed under section 23.13 of the Act come into force.

It should be noted that, for exports after March 2000 and before April 6, 2001, a related amendment to subsection 23.21(2) reduces the exemption threshold under the existing export tax (see commentary on clause 19).

**Clause 19**

Exemption from Export Tax Before April 6, 2001

Excise Tax Act
23.21

Existing section 23.2 of the *Excise Tax Act* imposes excise taxes on certain exports of tobacco products (as defined in section 23.1 of the

Act). Subsection 23.21(2) provides for an exemption from that tax. The existing exemption generally applies to that quantity of a particular category of tobacco product exported by a manufacturer in a calendar year that does not exceed 2.5% of the manufacturer's previous year's production of that category of tobacco product.

The amendment to subsection 23.21(2) under subclause 19(1) reduces the annual exemption from that export tax from 2.5% to 1.5% of the manufacturer's production in the preceding year. The amendment applies to exports after March 2000 but the new threshold is prorated for the 2000 calendar year such that, for purposes of that year, an exemption for 1.75% of the previous year's production applies.

Existing section 23.2 is repealed with respect to exports on or after April 6, 2001, when new export taxes on tobacco products are imposed under section 23.13 of the *Excise Tax Act*. Concurrent changes are made to the excise duty on exported tobacco products (see commentary on clauses 8, 9 and 18). Consequently, section 23.21 is repealed, effective April 6, 2001.

**Clause 20**

Exemption for Tobacco Products for Sale in Foreign Duty Free Shop

Excise Tax Act
23.22

The amendment repeals, as of April 6, 2001, section 23.22 of the *Excise Tax Act*, which exempts, from the existing export tax under section 23.2 of the Act, exports of tobacco products that are for delivery to a foreign duty free shop. Section 23.22 is repealed concurrent with the repeal of the existing export tax under section 23.2, which is replaced by the new taxes under section 23.13 of the Act (see commentary on clause 18).

It should be noted that the term "foreign duty free shop", which is defined in existing subsection 23.22(1), is still relevant for purposes of the new tax on tobacco products delivered to duty free shops and the new export tax provisions. The definition is therefore moved to subsection 2(1) of the Act (see commentary on clause 16).

**Clause 21**

Exemptions for Prescribed Tobacco Products

Excise Tax Act
23.3(1) and (2)

Existing section 23.3 of the *Excise Tax Act* exempts from the tax on exported tobacco products under existing section 23.2 certain prescribed tobacco products of a particular brand, and prescribed cigarettes of a particular type or formulation, that are produced in Canada exclusively for export. Subsections 23.3(1) and (2) are amended to reflect the repeal of the tax under existing section 23.2 and to apply, instead, for purposes of the new export taxes under section 23.13 on tobacco products manufactured in Canada and exported. These amendments come into force on April 6, 2001.

**Clause 22**

Tax on Tobacco Products Sold to Purchaser Not Authorised to Resell in Ontario

Excise Tax Act
23.31

Existing section 23.31 of the *Excise Tax Act* imposes an excise tax, in addition to the excise tax imposed under section 23 of the Act, on all diverted Ontario-marked manufactured tobacco products other than tobacco sticks. Under the existing legislation, manufactured tobacco products, other than tobacco sticks, that are marked or stamped for retail sale in Ontario are subject to a reduced rate of federal excise tax under section 23 at the time that their manufacturer delivers them to a purchaser. Section 23.31 ensures that the products ultimately bear tax at the higher general federal excise tax rate if they are instead sold to a person (other than a consumer) who is not authorised to sell tobacco products in Ontario. The additional tax is payable, by the person making the unauthorized sale, at the time of that sale.

Section 23.31 is amended so as to apply only to cigarettes since these are the only tobacco products for sale in Ontario that continue to bear a reduced federal excise tax rate under section 23 of the Act, after

April 5, 2001 (see commentary on amendments to section 3 of Schedule II to the Act). Accordingly, the amendments to section 23.31 come into force on April 6, 2001.

**Clause 23**

Tax on Cigarettes Sold to Purchaser Not Authorised to Resell in Quebec or New Brunswick

Excise Tax Act
23.32(1)

Existing section 23.32 of the *Excise Tax Act* imposes an excise tax, in addition to the excise tax imposed under section 23 of the Act, on cigarettes that are marked or stamped for retail sale in Quebec or New Brunswick and that are sold to a purchaser, other than a consumer, who is not authorized to sell cigarettes in the province. Under the existing legislation, cigarettes for retail sale in Quebec or New Brunswick are subject to a reduced rate of federal excise tax under section 23 at the time that their manufacturer delivers them to a purchaser. Section 23.32 ensures that the cigarettes ultimately bear tax at the higher general federal excise tax rate if they are instead sold to an unauthorized purchaser. The additional tax is payable, by the person making the unauthorized sale, at the time of that sale.

Subsection 23.32(1) is amended so as to apply only to cigarettes marked or stamped for retail sale in Quebec because, as of April 6, 2001, the reduced federal excise tax rate no longer applies to cigarettes that are for retail sale in New Brunswick (see commentary on amendments to section 1 of Schedule II to the Act). An amendment is also made to paragraph 23.32(1)(*b*) to add the word "producer" for consistency with other provisions that refer to a "manufacturer or producer".

These changes come into force on April 6, 2001.

**Clause 24**

Tax on Cigarettes Diverted from Sale in Nova Scotia or Prince Edward Island

Excise Tax Act
23.33 to 23.341

Existing section 23.33 of the *Excise Tax Act* imposes an excise tax, in addition to the excise tax imposed under section 23 of the Act, on cigarettes that, at the time that their manufacturer delivered them to a purchaser, were charged with federal excise tax at the reduced rate then applicable to cigarettes intended for retail sale in Nova Scotia. The cigarettes also become subject to the tax under section 23.33 if they are sold to a purchaser, other than a consumer, who is not authorized to sell cigarettes in that province.

Similarly, existing sections 23.34 and 23.341 of the Act impose an additional excise tax on cigarettes that were, at the time of their delivery to a purchaser, charged with federal excise tax at the reduced rate then applicable to cigarettes sold in Prince Edward Island but that are sold to a person, other than a consumer, who is not authorized to sell cigarettes in that province.

In each case, the additional tax is imposed to ensure that the cigarettes ultimately bear tax at the higher general federal excise tax rate if they are sold to an unauthorized purchaser. The additional tax on the cigarettes is payable, by the person making the unauthorized sale, at the time of that sale.

These sections are repealed because, as of April 6, 2001, cigarettes for sale in Nova Scotia or Prince Edward Island are no longer subject to a reduced rate of federal excise tax (see commentary on amendments to section 1 of Schedule II to the Act). Accordingly, these sections are repealed as of that day.

**Clause 25**

Tax on Black Stock if Unauthorized Sale in Ontario

Excise Tax Act
23.35

Existing section 23.35 of the *Excise Tax Act* imposes an excise tax, in addition to the excise tax imposed under section 23 of the Act, on certain tobacco products, referred to as "black stock", when they are sold in unauthorized quantities or to unauthorized purchasers in the Province of Ontario. "Black stock" is defined in subsection 2(1) of the Act to mean manufactured tobacco that is stamped to indicate that it has borne excise tax and duty but not so as to indicate that it is for retail sale in any particular province or provinces.

Under the existing legislation, black stock (other than tobacco sticks) is charged, at the time that its manufacturer delivers it to a purchaser, with a reduced rate of federal excise tax if the sale is in authorized quantities to a retailer that is situated on a reserve in Ontario and is authorized to sell black stock cigarettes to Indian consumers in the province. Section 23.35 ensures that the products ultimately bear tax at the higher general federal excise tax rate if they are sold in unauthorized quantities or to unauthorized purchasers.

Section 23.35 is amended so as to apply only to sales of black stock cigarettes since cigarettes are the only manufactured tobacco product for sale in Ontario that continues to attract a reduced rate of federal excise tax after April 5, 2001 (see commentary on amendments to section 3 of Schedule II to the Act). Accordingly, the amendments to section 23.35 come into force on April 6, 2001.

**Clause 26**

Tax on Black Stock Cigarettes if Unauthorized Sale in Nova Scotia

Excise Tax Act
23.36

Existing section 23.36 of the *Excise Tax Act* imposes an excise tax, in addition to the excise tax imposed under section 23 of the Act, on

certain cigarettes, referred to as "black stock cigarettes", when they are sold in unauthorized quantities or to unauthorized purchasers in the Province of Nova Scotia. The term "black stock cigarettes" is defined in subsection 2(1) of the Act to mean cigarettes that are stamped to indicate that they have borne excise tax and duty but not so as to indicate that they are for retail sale in any particular province or provinces.

Under the existing legislation, black stock cigarettes are charged with a reduced rate of federal excise tax if their manufacturer sells them, in authorized quantities, to a provincially-authorized wholesale vendor who acquires them for resale to a designated retail vendor. Designated retail vendors are authorized by the province of Nova Scotia to sell manufactured tobacco to Indian consumers on a reserve in the province. Section 23.36 ensures that the cigarettes ultimately bear federal excise tax at the higher general excise tax rate if they are sold in unauthorized quantities or to unauthorized purchasers.

Section 23.36 is repealed because, as of April 6, 2001, cigarettes for sale in the Province of Nova Scotia no longer attract a reduced rate of federal excise tax (see commentary on amendments to section 1 of Schedule II to the Act). Accordingly, section 23.36 is repealed as of that day.

**Clause 27**

Deductions or Refunds in Respect of Excise Tax on Tobacco Products

Excise Tax Act
68.161 to 68.169

Existing section 68.161 of the *Excise Tax Act* provides for a refund in respect of the tax on exported tobacco products under existing section 23.2 of the Act. Section 68.161 is repealed with respect to tobacco products exported after April 5, 2001 because of the concurrent repeal of that export tax and its replacement by the new taxes on exported tobacco products under section 23.13 of the Act (see commentary on clause 18).

Existing sections 68.162 to 68.168 of the Act provide for rebates and deductions in computing excise taxes payable under section 23 in respect of tobacco products that were held in inventory when excise tax rate changes came into effect in 1994. Those provisions have since lapsed and are therefore repealed, effective April 6, 2001.

Existing section 68.169 authorises the Minister of National Revenue to pay a rebate to a wholesale vendor licensed by the Province of Prince Edward Island in respect of sales of cigarettes that are marked or stamped to indicate that they are intended for retail sale in the Province of Nova Scotia. The rebate is available where the licensed wholesale vendor sells such cigarettes to a licensed retail vendor or consumer in Prince Edward Island. For reasons of commercial efficiency, the Nova Scotia stamps and markings are used in the case of tobacco products sold in Prince Edward Island. The rebate reduces the effective federal excise tax rate on such cigarettes sold in Prince Edward Island to the rate intended to apply to cigarettes sold in that province.

Given that, as of April 6, 2001, cigarettes for sale in the provinces of Nova Scotia and Prince Edward Island no longer attract a reduced rate of federal excise tax, the rebate provision under section 68.169 is repealed (see also the commentary on amendments to section 1 of Schedule II to the Act). This amendment applies to sales occurring after April 5, 2001.

**Clause 28**

Rebates and Refunds in Respect of Exported Tobacco Products

Excise Tax Act
68.171 and 68.172

New sections 68.171 and 68.172 of the *Excise Tax Act* provide for rebates or refunds in respect of excise tax paid on certain tobacco products that have been exported.

Section 68.171 Rebate of Tax to Importer if Foreign Taxes Paid

Under section 68.171, the export tax under new subsection 23.13(1) that is imposed on tobacco products (as defined in section 23.1)

exported in bond by their manufacturer for sale in a foreign domestic market is recoverable. The tax is recoverable if it is established that all duty and taxes levied on the products at the national level by the foreign country to which the products were exported have been paid. The rebate under section 68.171 does not apply to prescribed products manufactured exclusively for export, which are exempted under section 23.3 from the tax on exports.

In order to qualify for the recovery of tax imposed under subsection 23.13(1), the manufacturer of the tobacco must have satisfied the conditions imposed on the exportation of tobacco products in bond, referred to in subparagraph 58.1(3)(*a*)(i) and paragraph 58.1(3)(*b*) of the *Excise Act*. Specifically, the manufacturer must not have exceeded the manufacturer's annual limit on duty-free exports, as determined under subsection 58.1(4) of that Act. Further, the products must have been marked in accordance with section 202 of that Act to indicate that they were not for sale in Canada.

Subsection 68.171(1) first allows the person who imports the tobacco products into the foreign country to claim a rebate equal to the lesser of the total of the foreign taxes and duties paid and the tax paid under subsection 23.13(1) by the manufacturer. Subsection 68.171(4) then allows the manufacturer to claim a refund for the remaining amount, if any, by which the tax paid by the manufacturer exceeds the amount of the rebate to the importer. Pursuant to section 68.171 and section 72, application for these rebates must be made in the prescribed form and manner within two years after the exportation.

No rebate is available for tobacco products exported in circumstances in which the manufacturer has exceeded the manufacturer's annual limit on duty-free exports. In such cases, the manufacturer is liable for the excise tax on the exported products under subsection 23.13(2) of the *Excise Tax Act*, which is non-recoverable. The manufacturer is also liable for excise duty under the *Excise Act* on these products.

The onus is on the manufacturer to ensure that the importer is aware of whether a rebate is available with respect to any particular importation. Therefore, under subsection 68.171(3), if the importer has been paid an amount as a rebate, or as interest thereon, in those circumstances where no rebate was available, the amount is recaptured from the manufacturer, with interest if applicable. This is accomplished by deeming the amount paid to the importer to be tax

payable under Part III of the Act by the manufacturer. The amount is deemed to have become payable by the manufacturer on the last day of the first month following that in which the amount was paid to the importer.

New section 68.171 comes into force on April 6, 2001, which corresponds to the effective date of the new export tax under subsection 23.13(1) of the Act.

Section 68.172 Refund of Tax to Operator of Duty Free Shop

New section 68.172 provides authority for the Minister of National Revenue to refund, to the operator of a Canadian duty free shop, tax paid by the operator under new section 23.12 on imported tobacco products, if the operator can show that the products have been sold to a non-resident individual who exported them. The refund is available for the tax paid on the first carton of cigarettes, the first carton of tobacco sticks and the first 200 grams of other manufactured tobacco purchased by the non-resident.

Pursuant to subsection 68.172(2) and section 72 of the Act, application for the rebate must be made in the prescribed form and manner within two years after the sale of the products by the duty free shop operator to the non-resident.

New section 68.172 comes into force on April 6, 2001, which corresponds to the effective date of the new tax under section 23.12 on imported tobacco products delivered to a duty free shop.

**Clause 29**

Tax-paid Inventory Held When Duty Free Shop Licence Granted

Excise Tax Act
68.18(3.1)

Under existing subsection 68.18(2) of the *Excise Tax Act*, where, on the day a person is granted a licence to operate a duty free shop, the person holds in inventory for resale in the shop products that were subject to the excise tax under section 23, the person can apply for a rebate equal to the amount of that tax. The rebate is provided

because, under the existing legislation, after becoming so licensed, the person is able to purchase the products for sale in the shop exempt from that excise tax.

New subsection 68.18(3.1) is added to exclude tobacco products from the application of this rebate provision. This change is made to reflect the fact that, generally as of April 6, 2001, tobacco products delivered for sale in duty free shops will no longer be exempt from all tax under Part III of the Act. While they will continue to be exempt from the tax under section 23 of the Act, they are charged with an excise tax under new section 23.11 (see commentary on clause 18).

New subsection 68.18(3.1) comes into force on April 6, 2001.

**Clause 30**

Applications for Refunds or Rebates and Interest Thereon

Excise Tax Act
72(2), (3) and (7)

Section 72 of the *Excise Tax Act* sets out rules relating to the making of applications for amounts of rebates or refunds under certain provisions of Part III of the Act and the payment to the applicant of interest on those amounts where applicable. Subsections 72(2), (3) and (7) are amended to remove the references therein to sections 68.161 to 68.169 of the Act as of April 6, 2001.

Section 68.161, which provides for a refund of the existing export tax on tobacco products under section 23.2 of the Act, ceases to apply with respect to exports after April 5, 2001 since that export tax is concurrently repealed (see commentary on clause 18).

Sections 68.162 to 68.168 provided for rebates or deductions from the excise tax payable under section 23 in respect of tobacco inventories held when excise tax rate changes went into effect in 1994. Those provisions have since lapsed and are repealed, effective April 6, 2001, under clause 27.

Finally, clause 27 also repeals the existing refund provision under section 68.169, which reduced the effective federal excise tax rate on

cigarettes for sale in the Province of Prince Edward Island to the rate applicable in that province. That refund provision is repealed with respect to sales after April 5, 2001 because of the concurrent removal of the reduced federal excise tax rate on cigarettes for sale in that province (see commentary on amendments to section 1 of Schedule II to the Act).

**Clause 31**

Deductions from Part III Tax Remittable

Excise Tax Act
74(1)

Subsection 74(1) of the *Excise Tax Act* permits a refund owing under Part III to a person who is required to pay tax under that Part to be set off against an amount payable by the person. The existing subsection refers to some refund provisions under Part III, and return provisions under other Parts of the Act, that are no longer operative or are being repealed. The references to those provisions are therefore removed from subsection 74(1). This amendment comes into force on April 6, 2001.

**Clause 32**

Monthly Returns

Excise Tax Act
78

Section 78 of the *Excise Tax Act* sets out rules relating to the making of returns and the payment of tax, including the excise tax on tobacco products under Part III of the Act. The existing section refers, in subsections (1) to (4), to the taxpayer's taxable sales.

The references to sales in subsections 78(1) to (4) are removed to reflect the fact that the new excise tax under section 23.12 is not imposed in respect of sales by the taxpayer (see commentary on clause 18). In that case, the taxpayer is the operator of a duty free shop and the tax is payable in respect of deliveries to the shop of

imported tobacco. The return that the operator is required to make each month under section 78 is in respect of the preceding month's deliveries to the shop. The amendments also remove references to provisions that are no longer operative.

The amendments to section 78 come into force on April 6, 2001, which corresponds to the effective date of the new excise tax under section 23.12.

**Clause 33**

Interest on Payments Resulting from Disposition of Appeal

Excise Tax Act
81.38(8) and (8.1)

Existing subsections 81.38(8) and (8.1) of the *Excise Tax Act* require interest to be paid in certain circumstances on payments made by the Minister of National Revenue that result from the disposition of an appeal respecting certain applications for refunds. The subsections refer to applications under sections 68 to 68.161 and 68.165 to 69.

Subsection 81.38(8) is amended to refer simply to applications under sections 68 to 69 and subsection 81.38(8.1) is repealed. These changes are as a result of the repeal of sections 68.161 to 68.169 under clause 27. These amendments come into force on April 6, 2001.

**Clause 34**

Unauthorized Sale of Ontario-marked Tobacco Products

Excise Tax Act
97.1

Existing section 97.1 of the *Excise Tax Act* makes it an offence to sell or offer for sale, to a consumer in a province other than Ontario, cigarettes or fine-cut tobacco that are marked or stamped to indicate that they are intended for sale in Ontario. This is because the tobacco products would have borne federal excise tax under section 23 of the

Act, at the time that their manufacturer delivered them to a purchaser, at the reduced excise tax rate then applicable to tobacco products intended for sale in the Province of Ontario.

Section 97.1 is amended so as to apply only to cigarettes since, as of April 6, 2001, fine-cut tobacco for sale in Ontario is no longer subject to a reduced rate of federal excise tax (see commentary on changes to section 3 of Schedule II to the Act). Accordingly, the amendment to section 97.1 comes into force on April 6, 2001.

**Clause 35**

Unauthorized Sale of Quebec or New Brunswick-marked Cigarettes

Excise Tax Act
97.2

Existing section 97.2 of the *Excise Tax Act* makes it an offence to sell or offer for sale, to a consumer in a province other than Quebec or New Brunswick, cigarettes that are marked or stamped to indicate that they are intended for retail sale in Quebec or New Brunswick, as the case may be. This is because the cigarettes would have borne federal excise tax under section 23 of the Act, at the time that their manufacturer delivered them to a purchaser, at the reduced excise tax rates then applicable to cigarettes intended for retail sale in the province corresponding to their markings.

Section 97.2 is amended to delete the references to New Brunswick since, as of April 6, 2001, cigarettes intended for sale in that province are no longer subject to a reduced rate of federal excise tax (see commentary on changes to section 1 of Schedule II to the Act). Accordingly, the amendment to section 97.2 comes into force on April 6, 2001.

**Clause 36**

Unauthorized Sale of Nova Scotia-marked Cigarettes

Excise Tax Act
97.3

Existing section 97.3 of the *Excise Tax Act* makes it an offence to sell or offer for sale, to a consumer in a province other than Nova Scotia or Prince Edward Island, cigarettes that are marked or stamped under Nova Scotia law. This is because the cigarettes would have borne federal excise tax under section 23 of the Act, at the time that their manufacturer delivered them to a purchaser, at the reduced excise tax rates then applicable to cigarettes intended for retail sale in the Province of Nova Scotia or Prince Edward Island.

Section 97.3 is repealed, effective April 6, 2001, because cigarettes intended for sale in Nova Scotia or Prince Edward Island are no longer subject to a reduced rate of federal excise tax (see commentary on changes to section 1 of Schedule II to the Act).

**Clause 37**

Unauthorised Sale of Black Stock

Excise Tax Act
97.4 and 97.5

Existing sections 97.4 and 97.5 of the *Excise Tax Act* make it an offence to sell or offer for sale, to unauthorized persons in Ontario and Nova Scotia respectively, black stock or black stock cigarettes. "Black stock" and "black stock cigarettes" are defined in subsection 2(1) of the Act to mean manufactured tobacco and cigarettes, respectively, that have been stamped so as to indicate that they have borne excise tax and duty but not so as to indicate that they are for sale in any particular province or provinces. They are thus distinguishable as tobacco products that are intended for retail sale to Indian consumers on reserves in certain provinces.

Section 97.4 is amended, effective April 6, 2001, so as to apply only to black stock cigarettes because, as of that day, other black stock

products intended for sale in Ontario are no longer subject to a reduced rate of federal excise tax.

Section 97.5 is repealed in its entirety, effective April 6, 2001, since, as of that day, the reduced rate of federal excise tax is eliminated for all cigarettes intended for sale in Nova Scotia, including black stock cigarettes.

**Clause 38**

Inspection of Records, etc.

Excise Tax Act
98.2

Existing section 98.2 of the *Excise Tax Act* imposes requirements with respect to making available books and records of vendors who have sold certain tax-paid tobacco products to purchasers who have applied for rebates in respect of the tobacco products under any of sections 68.162 to 68.164 of the Act. Those sections provide for the payment of rebates in respect of tobacco held in inventory at various times in the past when changes in the rates of the federal excise tax on tobacco products took effect. The rebate provisions have since lapsed and are repealed under clause 27, effective April 6, 2001. Section 98.2 is therefore no longer necessary and is repealed as of the same day.

**Clause 39**

Failure to Make Records and Books Available

Excise Tax Act
100(5)

Existing subsection 100(5) of the *Excise Tax Act* makes it an offence to fail to comply with section 98.1 or 98.2 of the Act by failing to make records and books available as required by that section. Subsection 100(5) is amended as of April 6, 2001 to delete the reference to section 98.2 as that section is repealed as of that day (see commentary on clause 38).

**Clause 40**

Excise Tax Rates Applicable to Cigarettes

Excise Tax Act
Schedule II, section 1

Section 1 of Schedule II to the *Excise Tax Act* sets out the rates of excise tax imposed under section 23 of the Act on cigarettes that are stamped or marked for sale in particular provinces in which a reduced rate of excise tax applies. The section also specifies the general rate of the excise tax on cigarettes for sale in provinces or in territories in which no reduced rate applies.

The amendments to section 1 of the Schedule implement excise tax rate increases on cigarettes in the provinces in which a reduced federal excise tax rate on cigarettes applies under the existing legislation, being Ontario, Quebec, Nova Scotia, New Brunswick and Prince Edward Island. The magnitude of the federal tax increase in each case is such that, together with concurrent provincial tobacco tax increases, the total federal-provincial increase amounts to $4 per carton of 200 cigarettes.

As a result of the amendments, the federal excise tax rate applicable to cigarettes for sale in the provinces of Nova Scotia, New Brunswick and Prince Edward Island is the rate specified in paragraph 1(*f*) of Schedule II. Therefore, the only provinces in which a reduced federal excise tax rate continues to apply after April 5, 2001 are Ontario and Quebec.

These changes come into effect on April 6, 2001. It should also be noted that, pursuant to clause 44, for the purposes of applying the provisions of the *Excise Tax Act* that provide for the payment of, or liability to pay, interest in respect of any amount, such as an amount of excise tax, that amount is to be determined, and interest computed on it, as if the enactment implementing the excise tax rate increases were assented to on April 6, 2001.

Paragraph 1(*a*) of Schedule II sets out the excise tax rate for cigarettes that are marked or stamped to indicate that they are for retail sale in the Province of Ontario and for black stock cigarettes that are intended for retail sale on a reserve in that province. The

paragraph is amended to increase that rate from $0.08138 to $0.13138, for each five cigarettes. This federal tax increase therefore amounts to $2 per carton of 200 cigarettes.

Paragraph 1(*b*) of the Schedule sets out the excise tax rate for cigarettes that are marked or stamped to indicate that they are for retail sale in the Province of Quebec. The paragraph is amended to increase that rate from $0.07138 to $0.12138, for each five cigarettes. This federal tax increase therefore amounts to $2 per carton of 200 cigarettes.

Existing paragraph 1(*c*) of the Schedule sets out the excise tax rate for cigarettes that are marked or stamped to indicate that they are for retail sale in the Province of Nova Scotia, and for black stock cigarettes that are intended for retail sale on a reserve in that province. Similarly, existing paragraph 1(*d*) sets out the rate for cigarettes that are marked or stamped to indicate that they are for retail sale in New Brunswick. The reduced excise tax rates on cigarettes in those provinces is eliminated and paragraphs 1(*c*) and (*d*) are repealed. As a result, the general excise tax rate of $0.13388 per five cigarettes, set out in paragraph 1(*f*) of the Schedule, applies in those provinces. That represents a federal tax increase of $0.10 and $0.30 for each carton of 200 cigarettes, in the case of Nova Scotia and New Brunswick, respectively.

Under existing paragraph 1(*e*) of the Schedule, a reduced rate of federal excise tax also applies to cigarettes intended for retail sale in the Province of Prince Edward Island. Those cigarettes bear the same stamps and markings as do cigarettes intended for retail sale in Nova Scotia.

Under the existing legislation, the effective federal excise tax rate on cigarettes intended for retail sale in Prince Edward Island is reduced from the rate of $0.13138 for each five cigarettes set out in paragraph 1(*e*) of the Schedule to a rate of $0.10013 for each five cigarettes, by virtue of the refund under existing subsection 68.169(3.24) of the Act. As a result of the repeal of paragraph 1(*e*) and section 68.169 (see also the commentary on clause 27), the federal excise tax rate applicable to cigarettes for sale in Prince Edward Island is the general rate of $0.13388 for each five cigarettes under paragraph 1(*f*) of the Schedule. This amounts to an increase in the federal excise tax on those cigarettes of $1.35 per carton of 200 cigarettes.

**Clause 41**

Excise Tax Rates Applicable to Tobacco Sticks and Fine-cut Tobacco

Excise Tax Act
Schedule II, sections 2 and 3

Section 2 of Schedule II to the *Excise Tax Act* sets out the rate of federal excise tax on tobacco sticks that is imposed under section 23 of the Act. Section 2 of the Schedule is amended to increase the rate from $0.01465 per stick to $0.01965 per stick. This amounts to an increase of $1 per carton of 200 tobacco sticks. In the case of tobacco sticks, a uniform federal excise tax rate already applies across all provinces.

Section 3 of the Schedule sets out the applicable rates of federal excise tax on manufactured tobacco other than cigarettes and tobacco sticks (e.g., on fine-cut tobacco). Under existing paragraph 3(*a*), a reduced rate of excise tax applies to fine-cut tobacco that is marked or stamped to indicate that it is for retail sale in the Province of Ontario and to black stock fine-cut tobacco that is intended for retail sale on a reserve in that province. The existing rate is $1.648 per kilogram.

The amendment eliminates the reduced rate under paragraph 3(*a*) and increases the general rate, which now applies across all provinces, from $10.648 per kilogram to $15.648 per kilogram, or by $1 per 200 grams of fine-cut tobacco.

These changes come into effect on April 6, 2001. It should also be noted that, pursuant to clause 44, for the purposes of applying the provisions of the *Excise Tax Act* that provide for the payment of, or liability to pay, interest in respect of any amount, such as an amount of excise tax owing, that amount is to be determined, and interest computed on it, as if the enactment implementing the excise tax rate increases were assented to on April 6, 2001.

**Clause 42**

Non-Taxable Importations under the GST/HST

Excise Tax Act
Schedule VII, section 1.1

Section 1 of Schedule VII to the *Excise Tax Act* lists certain goods that, by virtue of their inclusion in this Schedule, are not subject to the goods and services tax or harmonized sales tax (GST/HST) imposed under Part IX of the Act when the goods are imported into Canada. The existing section includes goods classified under specified customs tariff items provided that the goods are not subject to duty under the *Customs Tariff*.

New section 1.1 of the Schedule is added to provide that, for purposes of section 1 of the Schedule, "duty" does not include the new duty levied under subsection 21(2) of the *Customs Tariff* on "traveller's tobacco" (see commentary on clause 3). This amendment ensures that the GST/HST continues not to apply to the quantity of tobacco imported by a returning resident that qualifies for relief under the traveller's allowance (e.g., 1 carton, in the case of cigarettes or tobacco sticks) despite the fact that such tobacco is subject to the new duty under subsection 21(2) of the *Customs Tariff*.

This amendment comes into force on October 1, 2001, which corresponds to the effective date of the new duty under subsection 21(2) of the *Customs Tariff*.

**Clause 43**

Tobacco Manufacturers' Surtax

Income Tax Act
182(1)

Part II of the *Income Tax Act* imposes a surtax on a corporation's tax payable under Part I of that Act on profits from tobacco manufacturing. The surtax was initially enacted for a 3-year period, then extended until February 8, 2000. The last amendment to this Part made the surtax permanent.

Subsection 182(1) is amended to increase the rate of the surtax from 40% to 50% of a corporation's Part I tax on tobacco manufacturing profits.

This amendment applies to taxation years ending after April 5, 2001. For the taxation year of a corporation that includes that day, the rate increase is prorated according to the number of days in the year that are after April 5, 2001.

**Clause 44**

Application of Interest Provisions

Clause 44 provides that, for the purposes of applying the provisions of the *Customs Act*, the *Excise Act* and the *Excise Tax Act* that provide for the payment of, or liability to pay, interest in respect of any amount, that amount is to be determined, and interest is to be computed on it, as if the *Tobacco Tax Amendments Act, 2001* were assented to on April 6, 2001.

If, for example, a person is required to pay a new duty that is deemed to come into force on April 6, 2001 and the person fails to pay that duty as and when the person would have been required had the amending Act received Royal Assent on April 6, 2001, the person will also be liable to pay interest on the unpaid amount. The interest will be computed from the day on which the person was required to pay the new duty according to the coming into force of the imposition provision and the related payment provisions, to the day the amount was paid. The interest will accrue in that manner despite when the amending Act receives Royal Assent. This rule is consistent with existing interest application rules for purposes of the income tax and the goods and services tax or harmonized sales tax under Part IX of the *Excise Tax Act*.